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THE

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VOLUME VIII.

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THE

LAWS OF ENGLAND

BEING

A COMPLETE STATEMENT OF THE WHOLE LAW OF ENGLAND.

BY

THE RIGHT HONOURABLE THE

EARL OF HALSBURY

LORD HIGH CHANCELLOR OF GREAT BRITAIN,
1885-86, 1886-92, and 1895-1905,

AND OTHER LAWYERS.

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CORPORATIONS.
COUNTY COURTS.

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TABLE OF CONTENTS

AND

TABLE OF CROSS-REFERENCES.

PAGE

Table of Abbreviations. - - - - - - - - - xxiii

Table of Statutes - - - - - - - - - - - xli

Table of Cases - - - - - - - - - - - - lxv

COPYHOLDS - - - - - - - - - - - - **1—134**

PART I. MANORS - - - - - - - - - - - 3

SECT. 1. Nature and Origin of Manors - - - - - - - 3

Sub-sect. 1. Creation and Extent of Manors - - - 3
Sub-sect. 2. Manorial Lands - - - - - - - 5
Sub-sect. 3. Miscellaneous Franchises - - - - 5
Sub-sect. 4. Manorial Customs generally - - - - 7
Sub-sect. 5. Manorial Courts - - - - - - 10
Sub-sect. 6. The Court Rolls - - - - - - 14

SECT. 2. Evidence as to the Existence and Extent of a Manor - 18

SECT. 3. Transmission and Division of Manors - - - - 19

SECT. 4. Destruction of Manors (Merger, Severance, Inclosure etc.) 20

PART II. THE LORD OF THE MANOR - - - - - - - 22

SECT. 1. The Lord's Rights - - - - - - - - - 22

Sub-sect. 1. Mines and Minerals - - - - - - - 22
Sub-sect. 2. Trees and Sporting - - - - - - - 24
Sub-sect. 3. Fines - - - - - - - - - 26
Sub-sect. 4. Heriots - - - - - - - - - 37
Sub-sect. 5. Reliefs - - - - - - - - - 45
Sub-sect. 6. Quit-rents, Rents of Assize, and other Services 46
Sub-sect. 7. Forfeiture for Waste, Alienation, and Crime - 46
Sub-sect. 8. Licence - - - - - - - - - 52
Sub-sect. 9. Escheat - - - - - - - - - 54

SECT. 2. The Lord's Remedies - - - - - - - - 56

Sub-sect. 1. Seizure - - - - - - - - - 56
Sub-sect. 2. Distress - - - - - - - - - 58
Sub-sect. 3. Action for Debt - - - - - - - - 59

PART III. OFFICERS OF THE MANOR - - - - - - - 59

SECT. 1. The Lord's Steward - - - - - - - - - 59

Sub-sect. 1. Nature of his Office - - - - - - - 59
Sub-sect. 2. Appointment - - - - - - - - 60

PAGE

PART III. OFFICERS OF THE MANOR—*continued.*

SECT. 1. The Lord's Steward—*continued.*

Sub-sect. 3. Powers and Duties - - - - - - - 61
Sub-sect. 4. Fees and Charges- - - - - - - - 63

SECT. 2. The Bailiff - - - - - - - - - - - 65

PART IV. THE TENANT OF THE MANOR - - - - - - 65

SECT. 1. Who may be Tenant - - - - - - - - - 65

SECT. 2. Nature of the Tenant's Estate - - - - - - 68

Sub-sect. 1. Generally- - - - - - - - - 68
Sub-sect. 2. Fee Conditional and Fee Tail - - - - 70
Sub-sect. 3. Estates for Life - - - - - - - 73
Sub-sect. 4. Estates *pur autre vie* - - - - - - 74
Sub-sect. 5. Estates for Years - - - - - - - 76
Sub-sect. 6. Estate in Remainder - - - - - - 77
Sub-sect. 7. Estates in Reversion - - - - - - 77
Sub-sect. 8. Curtesy - - - - - - - - - 78
Sub-sect. 9. Dower or Freebench - - - - - - 78
Sub-sect. 10. Guardianship - - - - - - - - 80
Sub-sect. 11. Trust Estates - - - - - - - - 81

SECT. 3. Creation of the Tenant's Estate - - - - - - - 82

Sub-sect. 1. By Grant - - - - - - - - - 82
Sub-sect. 2. By Statute- - - - - - - - - 86

SECT. 4. Transmission of the Tenant's Estate - - - - - - 86

Sub-sect. 1. By Descent or Statute - - - - - 86
Sub-sect. 2. By Surrender and Admittance - - - - 89
Sub-sect. 3. By Deed - - - - - - - - - 107
Sub-sect. 4. By Will - - - - - - - - - 109

SECT. 5. Destruction of the Tenant's Estate by Surrender, Merger, and Escheat and Forfeiture - - - - - - - 109

PART V. ENFRANCHISEMENT - - - - - - - - - 111

SECT. 1. At Common Law - - - - - - - - - 111

SECT. 2. Under the Copyhold Act, 1894 - - - - - - - 114

Sub-sect. 1. The Right to enfranchise - - - - - 114
Sub-sect. 2. Preliminary Requirements- - - - - 117
Sub-sect. 3. Compensation for Enfranchisement - - - 119
Sub-sect. 4. Valuation - - - - - - - - - 123
Sub-sect. 5. Expenses of Enfranchisement - - - - 124
Sub-sect. 6. Award - - - - - - - - - 125
Sub-sect. 7. Effect of Enfranchisement under the Act - - 126
Sub-sect. 8. Powers and Duties of Board of Agriculture and Fisheries- - - - - - - - - 128
Sub-sect. 9. Application of the Act to the Crown and Duchy of Lancaster - - - - - - - - 129

SECT. 3. Under Miscellaneous Statutes - - - - - - - 129

Sub-sect. 1. Lands Clauses Consolidation Act, 1845 - - 129
Sub-sect. 2. Settled Estates Act, 1877 - - - - - 130
Sub-sect. 3. Settled Land Act, 1882 - - - - - 130
Sub-sect. 4. Ecclesiastical Estates Act, 1851 - - - - 131
Sub-sect. 5. Universities and College Estates Act, 1898 - 131
Sub-sect. 6. Crown Lands Act, 1829 - - - - - 132
Sub-sect. 7. Duchy of Lancaster Acts - - - - - 133
Sub-sect. 8. Duchy of Cornwall Acts - - - - - 133
Sub-sect. 9. Charitable Trusts Acts, 1853 to 1891 - - - 134

For Local Customs - - - *See title* CUSTOM AND USAGES.
Rights of Common - - - ,, COMMONS AND RIGHTS OF COMMON.

PAGE

COPYRIGHT AND LITERARY PROPERTY* - - 135—208

PART I. LITERARY COPYRIGHT - - - - - - - - - 136

SECT. 1. In General - - - - - - - - - - 136

Sub-sect. 1. Proprietary Interest in Unpublished Works (including Letters) - - - - - - 136
Sub-sect. 2. Copyright in Published Works - - - - 139

SECT. 2. Subject-matter of Copyright - - - - - - - 142

Sub-sect. 1. Books in General - - - - - - - 142
Sub-sect. 2. Maps, Charts, and Plans - - - - - - 144
Sub-sect. 3. Compilations, Catalogues, and Advertisements - 145
Sub-sect. 4. Abridgments and Quotations - - - - - 146
Sub-sect. 5. Newspapers, Magazines, and other Periodical Works - - - - - - - - - - 147
Sub-sect. 6. Translations - - - - - - - - 149
Sub-sect. 7. Lectures, Sermons, Speeches and Reports - 150

SECT. 3. Registration of Books, including Newspapers - - - 152

SECT. 4. Assignment - - - - - - - - - - 157

SECT. 5. Licence to Print - - - - - - - - - 161

SECT. 6. Infringement - - - - - - - - - - 163

Sub-sect. 1. In General - - - - - - - - 163
Sub-sect. 2. Remedies for Infringement of Copyright - - 165
Sub-sect. 3. Additional Remedies relating to Pirated Copies of Musical Compositions - - - - - 170

SECT. 7. Protection of certain Interests acquired prior to 1887 - 171

SECT. 8. Crown Copyright - - - - - - - - - 172

SECT. 9. University Copyright - - - - - - - - 174

SECT. 10. Delivery of Copies to Libraries - - - - - - 174

PART II. PERFORMING RIGHT IN DRAMATIC PIECES AND MUSICAL COMPOSITIONS - - - - - - - - - - 175

SECT. 1. In General - - - - - - - - - - 175

Sub-sect. 1. Unpublished Works - - - - - - - 175
Sub-sect. 2. Published Works - - - - - - - 177

SECT. 2. Registration - - - - - - - - - - 179

SECT. 3. Assignment - - - - - - - - - - 181

SECT. 4. Infringement - - - - - - - - - - 182

Sub-sect. 1. Dramatic Pieces - - - - - - - 182
Sub-sect. 2. Musical Compositions - - - - - - 186

PART III. ARTISTIC COPYRIGHT - - - - - - - - 188

SECT. 1. In General - - - - - - - - - - 188

Sub-sect. 1. Unpublished Works - - - - - - - 188
Sub-sect. 2. Published Works - - - - - - - 188

SECT. 2. Paintings, Drawings, and Photographs - - - - 191

Sub-sect. 1. In General - - - - - - - - 191
Sub-sect. 2. Infringement - - - - - - - - 196

SECT. 3. Prints, Engravings, and Lithographs - - - - 200

Sub-sect. 1. In General - - - - - - - - 200
Sub-sect. 2. Infringement - - - - - - - - 203

SECT. 4. Sculpture, Models and Casts - - - - - - 206

* The law as to Foreign and Colonial Copyright is incorporated with the law as to English Copyright in the respective headings of this article.—EDS.

For Libel - - - - *See title* LIBEL AND SLANDER.
Newspapers and Printers - „ PRESS AND PRINTING.
Theatres and Places of Entertainment - - „ THEATRES, MUSIC HALLS AND SHOWS.
Trade Marks and Designs - „ TRADE MARKS AND DESIGNS.

CORNWALL, DUCHY OF.

See CONSTITUTIONAL LAW.

PAGE

CORONERS - - - - - - - - - - - - 209—297

PART I. INTRODUCTORY - - - - - - - - - - - 210

PART II. CLASSIFICATION OF CORONERS - - - - - - - 212

SECT. 1. The Various Kinds of Coroners - - - - - - 212

SECT. 2. Coroners by Virtue of their Office - - - - - - 212

SECT. 3. County Coroners - - - - - - - - - 212

Sub-sect. 1. Division of Counties into Coroners' Districts - 212
Sub-sect. 2. Appointment - - - - - - - - 215
Sub-sect. 3. Qualification - - - - - - - - 218
Sub-sect. 4. Local Jurisdiction - - - - - - - 219
Sub-sect. 5. Salary and Fees - - - - - - - 222
Sub-sect. 6. Removal - - - - - - - - - 224

SECT. 4. Borough Coroners - - - - - - - - - 225

Sub-sect. 1. Appointment - - - - - - - - 225
Sub-sect. 2. Qualification - - - - - - - - 226
Sub-sect. 3. Jurisdiction - - - - - - - - 226
Sub-sect. 4. Salary and Fees - - - - - - - 227
Sub-sect. 5. Removal - - - - - - - - - 228

SECT. 5. Franchise Coroners - - - - - - - - - 228

Sub-sect. 1. Definition - - - - - - - - - 228
Sub-sect. 2. King's Coroner and Attorney - - - - 229
Sub-sect. 3. Coroner of the King's Household - - 230
Sub-sect. 4. Coroner of the Admiralty - - - - - 231
Sub-sect. 5. Other Franchise Coroners - - - - - 234

SECT. 6. Deputy Coroners - - - - - - - - - 236

PART III. DUTIES, PRIVILEGES AND LIABILITIES OF CORONERS 237

SECT. 1. Duties of Coroners - - - - - - - - - 237

Sub-sect. 1. Introductory - - - - - - - - 237
Sub-sect. 2. Inquests *super visum corporis* - - - - 239
Sub-sect. 3. Inquests on Treasure Trove - - - - 247
Sub-sect. 4. To act in place of Sheriff - - - - - 248
Sub-sect. 5. Judgment in Outlawry - - - - - 250

SECT. 2. Privileges of Coroners - - - - - - - - 250

SECT. 3. Liabilities of Coroners - - - - - - - - 251

Sub-sect. 1. Removal etc. for Misbehaviour or Inability - 251
Sub-sect. 2. Imposition of Fine or Costs on Coroner - - 255
Sub-sect. 3. Not to act as Solicitor and Coroner in same Case 255
Sub-sect. 4. Penalties under Special Statutes - - - 256
Sub-sect. 5. For Acts in Excess of Jurisdiction - - - 256

PART IV. INQUESTS - - - - - - - - - - - 256

SECT. 1. Proceedings at Inquest - - - - - - - - 256

Sub-sect. 1. Where and when to be held - - - - 256
Sub-sect. 2. Who may attend - - - - - - - 258
Sub-sect. 3. The Jury - - - - - - - - - 259
Sub-sect. 4. View of the Body - - - - - - - 263
Sub-sect. 5. Witnesses and Evidence - - - - - 264
Sub-sect. 6. Medical Witnesses and Post-mortem Examinations - - - - - - - - - - 268

PART IV. INQUESTS—*continued.* PAGE
SECT. 1. Proceedings at Inquests—*continued.*
Sub-sect. 7. Adjournment - - - - - - - - 270
Sub-sect. 8. Verdict of Jury - - - - - - - 270
Sub-sect. 9. Coroner's Certificate and Order for Burial - 271
SECT. 2. The Inquisition - - - - - - - - 273
Sub-sect. 1. Form and Requisites - - - - - 273
Sub-sect. 2. Custody and Filing - - - - - - 279
Sub-sect. 3. Traverse of Inquisition - - - - - 279
Sub-sect. 4. Amendment - - - - - - - 280
Sub-sect. 5. Quashing Inquisition and New Inquest - - 283
Sub-sect. 6. Proceedings upon Inquisition charging Murder or Manslaughter - - - - - - 288
SECT. 3. Expenses and Returns of Inquests - - - - - 293
Sub-sect. 1. Schedule of Fees and Allowances - - - 293
Sub-sect. 2. Fees of Medical Witnesses - - - - 293
Sub-sect. 3. Payment of Expenses by and to Coroner - - 294
Sub-sect. 4. Detached Parts of Counties - - - - 295
Sub-sect. 5. Returns by Borough Coroners - - - - 296
PART V. INQUESTS ON FIRES IN THE CITY OF LONDON - - 296

For Murder and Manslaughter - *See title* CRIMINAL LAW AND PROCEDURE.

CORPORAL OATH.

See CRIMINAL LAW AND PROCEDURE; EVIDENCE.

CORPORAL PUNISHMENT.

See CRIMINAL LAW AND PROCEDURE; EDUCATION; INFANTS AND CHILDREN.

CORPORATIONS*. - - - - - - - - - - 299—401
PART I. THE NATURE OF CORPORATIONS - - - - - 301
SECT. 1. Definitions and Characteristics - - - - - 301
SECT. 2. Classification - - - - - - - - - 303
Sub-sect. 1. In General - - - - - - - - 303
Sub-sect. 2. Corporations Aggregate - - - - - 305
Sub-sect. 3. Corporations Sole - - - - - - 305
SECT. 3. The Name - - - - - - - - - - 306
SECT. 4. The Seal - - - - - - - - - - 309
SECT. 5. Domicil - - - - - - - - - - 311
Sub-sect. 1. English Corporations - - - - - 311
Sub-sect. 2. Foreign Corporations - - - - - 312
PART II. THE CREATION OF CORPORATIONS - - - - - 313
SECT. 1. In General - - - - - - - - - - 313
SECT. 2. By Common Law - - - - - - - - - 314
SECT. 3. By Charter - - - - - - - - - - 314
Sub-sect. 1. Grant and Acceptances of Charters - - - 314
Sub-sect. 2. Interpretation of Charters - - - - - 317
Sub-sect. 3. New Charters - - - - - - - - 318
SECT. 4. By Statute - - - - - - - - - - 320
SECT. 5. By Prescription - - - - - - - - - 321

* This article deals with the general principles of law applicable to all corporations. For the law applicable to a particular class of corporations reference must be made to the article dealing with such class. A list of such articles will be found at the end of this table of contents.—EDS.

PAGE

PART III. THE MEMBERS - - - - - - - - - - 322
SECT. 1. In General - - - - - - - - - - 322
SECT. 2. Qualification - - - - - - - - - - 322
SECT. 3. Rights as against the Corporation - - - - - 323
SECT. 4. Disfranchisement - - - - - - - - - 324

PART IV. GOVERNMENT - - - - - - - - - - 325
SECT. 1. Officers - - - - - - - - - - - 325
Sub-sect. 1. Appointment of Officers - - - - - 325
Sub-sect. 2. Powers and Duties - - - - - - 329
Sub-sect. 3. Vacation of Office (Amotion) - - - - 330
SECT. 2. Regulations - - - - - - - - - - 334
Sub-sect. 1. In General - - - - - - - 334
Sub-sect. 2. Power to make Bye-laws - - - - - 334
Sub-sect. 3. Validity of Bye-laws - - - - - 336
Sub-sect. 4. Penalties - - - - - - - - 339
Sub-sect. 5. Proof of Bye-laws - - - - - - 340
Sub-sect. 6. Effect of Usage - - - - - - - 340
Sub-sect. 7. Statutory Regulations - - - - - 341
SECT. 3. Meetings - - - - - - - - - - - 341
Sub-sect. 1. Convention of Meetings - - - - - 341
Sub-sect. 2. The Quorum - - - - - - - 343
Sub-sect. 3. Proceedings at Meetings - - - - - 345
Sub-sect. 4. Voting - - - - - - - - 348
Sub-sect. 5. Elections of Members and Officers - - - 350
(1) Power to Elect - - - - - - - - 350
(2) Who may Elect - - - - - - - - 351
(3) The Election - - - - - - - - - 352
SECT. 4. External Government or Visitation - - - - - 355

PART V. POWERS AND LIABILITIES - - - - - - - 356
SECT. 1. In General - - - - - - - - - - 356
SECT. 2. Limitation of Powers (*Ultra Vires*) - - - - - 359
SECT. 3. Ownership of Property - - - - - - - - 365
Sub-sect. 1. In General - - - - - - - 365
Sub-sect. 2. Mortmain - - - - - - - - 367
Sub-sect. 3. Acquisition of Land - - - - - - 371
Sub-sect. 4. Nature of Estate - - - - - - 374
Sub-sect. 5. Alienation of Land - - - - - - 375
Sub-sect. 6. Property other than Land - - - - 377
Sub-sect. 7. Liability to Taxation - - - - - 377
SECT. 4. In Contract - - - - - - - - - - 379
Sub-sect. 1. In General - - - - - - - 379
Sub-sect. 2. Necessity for the Seal - - - - - 380
Sub-sect. 3. When the Seal may be dispensed with - - 382
SECT. 5. In Tort - - - - - - - - - - - 386
SECT. 6. Criminal Liability - - - - - - - - - 390
SECT. 7. Legal Proceedings - - - - - - - - - 392
Sub-sect. 1. In General - - - - - - - 392
Sub-sect. 2. Procedure - - - - - - - - 394

PART VI. DISSOLUTION - - - - - - - - - - 397
SECT. 1. Surrender - - - - - - - - - - 397
SECT. 2. Forfeiture - - - - - - - - - - 397
SECT. 3. Revocation - - - - - - - - - - 398

PART VI. DISSOLUTION—*continued.* PAGE

SECT. 4. Insufficiency of Members - - - - - - - - 399
SECT. 5. By Legal Proceedings - - - - - - - - 400
SECT. 6. Effect of Dissolution - - - - - - - - 401

For Banking Companies - - *See title* BANKERS AND BANKING.
Boards of Guardians - - ,, POOR LAW.
Building Societies - - ,, BUILDING SOCIETIES.
Burial Boards - - ,, BURIAL AND CREMATION.
Canal Companies - - ,, RAILWAYS AND CANALS.
Cemetery Companies - ,, BURIAL AND CREMATION.
Charitable Corporations - ,, CHARITIES.
Companies generally - ,, COMPANIES.
County Councils - - ,, LOCAL GOVERNMENT.
District Councils - - ,, LOCAL GOVERNMENT.
Ecclesiastical Corporations ,, ECCLESIASTICAL LAW.
Electrical Companies - ,, ELECTRIC LIGHTING, TRACTION AND POWER.
Foreign Corporations - ,, COMPANIES; CONFLICT OF LAWS.
Freehold Land Societies - ,, INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.
Friendly Societies - - ,, FRIENDLY SOCIETIES.
Gas Companies - - ,, GAS.
Industrial and Provident Societies - - - ,, INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.
Insurance Companies - ,, INSURANCE.
Light Railway Companies ,, TRAMWAYS AND LIGHT RAILWAYS.
Metropolitan Borough Councils - - - ,, METROPOLIS.
Municipal Corporations - ,, LOCAL GOVERNMENT.
Parish Councils - - ,, LOCAL GOVERNMENT.
Railway Companies - - ,, RAILWAYS AND CANALS.
Telegraph and Telephone Companies - - - ,, TELEGRAPHS AND TELEPHONES.
Tramway Companies - ,, TRAMWAYS AND LIGHT RAILWAYS.
Unincorporated Associations - - - - - ,, CLUBS; CONTRACT; LITERARY AND SCIENTIFIC INSTITUTIONS; LOAN SOCIETIES; PARTNERSHIP.
Water Companies - - ,, WATER SUPPLY.

CORPOREAL HEREDITAMENT.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

CORPSE.

See BURIAL AND CREMATION; CRIMINAL LAW AND PROCEDURE; EXECUTORS AND ADMINISTRATORS.

CORRUPTION.

See CRIMINAL LAW AND PROCEDURE.

CORRUPT PRACTICES.

See ELECTIONS.

COSTS.

See COUNTY COURTS; PRACTICE AND PROCEDURE; SOLICITORS; AND TITLES *passim.*

COST-BOOK MINE.

See COMPANIES; MINES, MINERALS AND QUARRIES.

CO-SURETIES.

See GUARANTEE.

COUNCILLORS.

See LOCAL GOVERNMENT.

COUNSEL.

See BARRISTERS.

COUNTERCLAIM.

See SET-OFF AND COUNTERCLAIM.

COUNTERFEITING.

See CRIMINAL LAW AND PROCEDURE.

COUNTERPART.

See DEEDS AND OTHER INSTRUMENTS; LANDLORD AND TENANT.

COUNTY BRIDGE.

See LOCAL GOVERNMENT.

COUNTY COUNCIL.

See LOCAL GOVERNMENT.

PAGE

COUNTY COURTS **405—693**

PART I. COURTS, JUDGES, AND OFFICERS 410

SECT. 1. Courts 410

Sub-sect. 1. In General 410
Sub-sect. 2. Districts 411
Sub-sect. 3. Local Jurisdictions 412
Sub-sect. 4. Times of Sitting 412
Sub-sect. 5. Buildings and Incidental Expenses . . . 414

SECT. 2. Judges 414

Sub-sect. 1. Appointment and Effect thereof; Removal . 414
Sub-sect. 2. Deputies 416
Sub-sect. 3. Salaries and Pensions 417

SECT. 3. Registrars 417

Sub-sect. 1. Appointment and Effect thereof; Removal . 417
Sub-sect. 2. Duties and Powers 418
Sub-sect. 3. Joint Registrars and Deputies 419
Sub-sect. 4. Salaries 420

PART I. COURTS, JUDGES, AND OFFICERS—*continued.* PAGE

SECT. 4. Bailiffs - - - - - - - - - - - 421
Sub-sect. 1. Appointment of High Bailiff and Bailiffs - - 421
Sub-sect. 2. Duties - - - - - - - - - 422
Sub-sect. 3. Salary - - - - - - - - - 422
SECT. 5. Treasurers - - - - - - - - - 423
SECT. 6. Liabilities and Protection of Officers - - - - 423
Sub-sect. 1. Liabilities of Officers Generally - - - 423
Sub-sect. 2. Liabilities of High Bailiff - - - - - 425
Sub-sect. 3. Protection of Officers - - - - - 426

PART II. JURISDICTION AND LAW - - - - - - - 428
SECT. 1. Ordinary Jurisdiction of County Court - - - - 428
Sub-sect. 1. In General - - - - - - - - 428
Sub-sect. 2. Exceptions to the Ordinary Jurisdiction - - 430
Sub-sect. 3. Jurisdiction under the Judicature Acts - - 432
Sub-sect. 4. Jurisdiction by Consent - - - - - 434
SECT. 2. Jurisdiction in Actions affecting Real Property - - 435
Sub-sect. 1. Ejectment - - - - - - - - 435
Sub-sect. 2. Recovery of Possession - - - - - 436
Sub-sect. 3. Where Title in Question - - - - - 438
SECT. 3. Remitted Actions - - - - - - - - 438
Sub-sect. 1. Actions of Contract - - - - - - 438
Sub-sect. 2. Actions of Tort - - - - - - - 441
Sub-sect. 3. Equitable Actions - - - - - - 442
Sub-sect. 4. Interpleader Proceedings - - - - - 443
SECT. 4. Proceedings in Equity - - - - - - - - 443
Sub-sect. 1. In General - - - - - - - - 443
Sub-sect. 2. Transfer of Equitable Actions to Chancery Division - - - - - - - - 446
SECT. 5. Bills of Exchange Act, 1855 - - - - - - 447

PART III. PROCEDURE BEFORE TRIAL - - - - - - 448
SECT. 1. Commencement of Action - - - - - - - 448
Sub-sect. 1. District for Commencement of Ordinary Actions 448
Sub-sect. 2. District for Commencement of Equity Actions - 452
Sub-sect. 3. Parties - - - - - - - - - 453
Sub-sect. 4. Joinder of Causes of Action - - - - 458
Sub-sect. 5. Abandonment of Excess - - - - - 459
SECT. 2. Summons and Service - - - - - - - - 460
Sub-sect. 1. Plaint and Summons - - - - - - 460
Sub-sect. 2. Particulars and Statement of Claim - - - 466
Sub-sect. 3. Service - - - - - - - - - 468
Sub-sect. 4. Special Duties of Bailiff as to Service - - 475
Sub-sect. 5. Service out of England and Wales - - - 477
Sub-sect. 6. Summons and Service under Bills of Exchange Act, 1855 - - - - - - - - 478
Sub-sect. 7. Infants and Persons of Unsound Mind - - 479
SECT. 3. Petition and Service - - - - - - - - - 481
SECT. 4. Consolidation, Stay, and Transfer of Actions - - - 481
Sub-sect. 1. Consolidation and Stay of Actions - - - 481
Sub-sect. 2. Transfer of Actions - - - - - - - 482
Sub-sect. 3. Transfer for Trial of Actions under extended Jurisdiction - - - - - - - - - 483

PART III. PROCEDURE BEFORE TRIAL—*continued.* PAGE

SECT. 5. Defence and Counterclaim - - - - - - - 485
Sub-sect. 1. Notices of Defence - - - - - - - 485
Sub-sect. 2. Defence in Actions under Bills of Exchange Act, 1855 - - - - - - - - 489
Sub-sect. 3. Objection to the Jurisdiction - - - - 489
Sub-sect. 4. Set-off and Counterclaim - - - - - 491
SECT. 6. Contribution and Indemnity - - - - - - - 491
SECT. 7. Payment into and out of Court - - - - - - 493
Sub-sect. 1. In General - - - - - - - - - 493
Sub-sect. 2. Payment out of Court - - - - - - 497
Sub-sect. 3. Payment into Court in Cases of Infants and Lunatics - - - - - - - - - - 497
Sub-sect. 4. Payment in, Transfer and Investment by Trustee and Others - - - - - - - - - 497
Sub-sect. 5. Investment and Payment out of Funds - - 499
SECT. 8. Discontinuance, Confession and Admissions - - - 500
Sub-sect. 1. Discontinuance - - - - - - - - 500
Sub-sect. 2. Confession and Admissions - - - - 500
SECT. 9. Interlocutory Applications and Orders - - - - 503
Sub-sect. 1. Special Applications - - - - - - - 503
Sub-sect. 2. Receiver - - - - - - - - - - 505
Sub-sect. 3. Application for Directions - - - - - - 506
Sub-sect. 4. Practice generally on Interlocutory Applications 507
SECT. 10. Amendment - - - - - - - - - - - 508
Sub-sect. 1. Amendment in General - - - - - - 508
Sub-sect. 2. Amendment of Parties - - - - - - 509
Sub-sect. 3. Change of Parties - - - - - - - 511
SECT. 11. Evidence before Trial - - - - - - - - - 513
Sub-sect. 1. Interrogatories and Discovery of Documents - 513
Sub-sect. 2. Notices to Admit and Produce - - - - 516
Sub-sect. 3. Examination before Trial - - - - - - 516
Sub-sect. 4. Affidavits - - - - - - - - - - 518
SECT. 12. Jury and Assessors - - - - - - - - - - 520
Sub-sect. 1. Jury - - - - - - - - - - - 520
Sub-sect. 2. Assessors - - - - - - - - - - 523
SECT. 13. Arbitration - - - - - - - - - - - 525

PART IV. TRIAL, JUDGMENT, AND EXECUTION - - - - 525
SECT. 1. Persons qualified to Practice - - - - - - - 525
SECT. 2. Non-appearance of Parties - - - - - - - 526
SECT. 3. Hearing - - - - - - - - - - - 528
Sub-sect. 1. Powers of Judge and Registrar - - - - 528
Sub-sect. 2. Witnesses - - - - - - - - - - 529
Sub-sect. 3. Proceedings in Court - - - - - - - 531
SECT. 4. Judgment - - - - - - - - - - - - 533
Sub-sect. 1. In General - - - - - - - - - 533
Sub-sect. 2. Judgment under Bills of Exchange Act, 1855 - 538
Sub-sect. 3. Nonsuit - - - - - - - - - - 538
Sub-sect. 4. Time for Payment and Instalments - - - 539
Sub-sect. 5. Accounts and Inquiries - - - - - - 540
Sub-sect. 6. Judgment for or against Executors and Administrators - - - - - - - - - - 546
Sub-sect. 7. Registry of Judgments - - - - - - 547
SECT. 5. New Trial - - - - - - - - - - - - 548

PART IV. TRIAL, JUDGMENT, AND EXECUTION—*continued.* PAGE

SECT. 6. Execution - - - - - - - - - - - 550

Sub-sect. 1. In General - - - - - - - - 550
Sub-sect. 2. Execution against Goods - - - - - 551
Sub-sect. 3. Where Leave required - - - - - 553
Sub-sect. 4. The Warrant - - - - - - - - 555
Sub-sect. 5. Execution against a Partnership - - - 556
Sub-sect. 6. Effect and Execution of the Warrant - - 557
Sub-sect. 7. Removal of Judgment into the High Court - 560
Sub-sect. 8. Setting Aside or Stay of Execution - - 560
Sub-sect. 9. Prior Claims for Rent and Taxes - - - 563
Sub-sect. 10. Sale under Execution - - - - - 564
Sub-sect. 11. Execution out of the Jurisdiction - - - 567
Sub-sect. 12. Recovery of Possession of Land - - - 568
Sub-sect. 13. Recovery of Specific Chattels - - - - 569

SECT. 7. Attachment of Debts - - - - - - - - 570

SECT. 8. Attachment for Disobedience of Orders - - - - 577

PART V. COSTS - - - - - - - - - - - - - 578

SECT. 1. General Principles - - - - - - - - - 578

Sub-sect. 1. Discretion of Judge - - - - - - - 578
Sub-sect. 2. Scales of Costs, and Discretion of Judge thereto 580
Sub-sect. 3. Discretion as to particular Items - - - 582

SECT. 2. Costs of parties not employing a solicitor - - - - 583

SECT. 3. Costs where a Solicitor is employed - - - - - 583

Sub-sect. 1. Costs between Party and Party - - - 583
Sub-sect. 2. Costs between Solicitor and Client - - - 585

SECT. 4. Remitted Actions - - - - - - - - - 586

SECT. 5. Particular Cases - - - - - - - - - 588

Sub-sect. 1. Equitable Actions and Matters - - - 588
Sub-sect. 2. Actions under the extended Jurisdiction - - 590
Sub-sect. 3. Third Parties - - - - - - - - 590
Sub-sect. 4. Detinue - - - - - - - - - 591
Sub-sect. 5. Ejectment and Real Property Actions - - 591
Sub-sect. 6. Injunctions - - - - - - - - 592
Sub-sect. 7. Miscellaneous Proceedings - - - - 592
Sub-sect. 8. Actions tried by Consent - - - - - 594
Sub-sect. 9. Counsel's Fees - - - - - - - 594
Sub-sect. 10. Witnesses' Allowances - - - - - 595

SECT. 6. Taxation and Review - - - - - - - - 597

Sub-sect. 1. Taxation - - - - - - - - - 597
Sub-sect. 2. Review of Taxation - - - - - - - 599

SECT. 7. Recovery of Costs - - - - - - - - - 600

SECT. 8. Security for Costs - - - - - - - - - 600

PART VI. APPEALS - - - - - - - - - - - 601

SECT. 1. Appeals - - - - - - - - - - - 601

Sub-sect. 1. Cases in which an Appeal lies - - - - 601
Sub-sect. 2. Procedure leading to Appeal - - - - 604
Sub-sect. 3. Hearing of Appeals - - - - - - 607

SECT. 2. *Certiorari* - - - - - - - - - - 610

SECT. 3. Prohibition - - - - - - - - - - 611

SECT. 4. Mandamus - - - - - - - - - - 614

PAGE

PART VII. GENERAL POWERS AND REGULATIONS - - - - 615
SECT. 1. Contempt in Open Court - - - - - - - - 615
SECT. 2. Rules and Forms - - - - - - - - - 617
SECT. 3. Fees - - - - - - - - - - - - 618
SECT. 4. Service, Time, Notices and Seal - - - - - 619
SECT. 5. Construction - - - - - - - - - - 621

PART VIII. JURISDICTION UNDER SPECIAL STATUTES - - - 622
SECT. 1. Introductory - - - - - - - - - - 622
Sub-sect. 1. Special Powers of Judges and Registrars - - 622
Sub-sect. 2. Procedure - - - - - - - - - 624
SECT. 2. Agricultural Holdings Act, 1908 - - - - - 625
Sub-sect. 1. Jurisdiction - - - - - - - - 625
Sub-sect. 2. Procedure in General - - - - - - 626
Sub-sect. 3. Procedure on Application for Statement of Special Case - - - - - - - - - - 626
Sub-sect. 4. Procedure on Statement of a Case - - - 627
Sub-sect. 5. Procedure for Removal of Arbitrator or to set aside Award - - - - - - - - 628
Sub-sect. 6. Procedure for Recovery of Money or Settlement of a Dispute as to a Distress - - - - 630
Sub-sect. 7. Procedure for Appointment etc. of Guardians - 630
Sub-sect. 8. Costs - - - - - - - - - - 631
Sub-sect. 9. Appeal - - - - - - - - - - 631
SECT. 3. Alkali etc. Works Regulation Act, 1906 - - - - 631
SECT. 4. Allotments Cottage Gardens (Compensation for Crops) Act, 1887 - - - - - - - - - - 633
SECT. 5. Allotments Extension Act, 1882 - - - - - 634
SECT. 6. Army Act, 1881 - - - - - - - - - 634
SECT. 7. Ballot Act, 1872 - - - - - - - - - 635
SECT. 8. Brine Pumping (Compensation for Subsidence) Act, 1891 636
SECT. 9. Building Societies Act, 1874 - - - - - - - 637
SECT. 10. Charitable Trusts Acts, 1853 to 1891 - - - - 640
SECT. 11. Collecting Societies and Industrial Assurance Companies Act, 1896 - - - - - - - - - - 643
SECT. 12. Commons Act, 1876 - - - - - - - - 643
SECT. 13. Court of Probate Acts, 1857 and 1858 - - - - 644
SECT. 14. Employers and Workmen Act, 1875 - - - - 646
SECT. 15. Extraordinary Tithe Redemption Act, 1886 - - - 647
SECT. 16. Factory and Workshop Act, 1901 - - - - - 648
SECT. 17. Finance Act, 1894 - - - - - - - - - 648
SECT. 18. Fines and Recoveries Act, 1833; Married Women's Reversionary Interests Act, 1857 - - - - - 650
SECT. 19. Friendly Societies Act, 1896 - - - - - - 651
SECT. 20. Government Annuities Acts, 1864 and 1882 - - - 653
SECT. 21. Guardianship of Infants Act, 1886 - - - - - 654
SECT. 22. Highways and Locomotives (Amendment) Act, 1878 - 655
SECT. 23. Hosiery Manufacture (Wages) Act, 1874 - - - 655
SECT. 24. Housing of the Working Classes Acts, 1890 and 1903 - 656
SECT. 25. Inclosure etc. Expenses Act, 1868 - - - - - 656
SECT. 26. Industrial and Provident Societies Act, 1893 - - - 657

PAGE

PART VIII. JURISDICTION UNDER SPECIAL STATUTES—*continued.*

SECT. 27. Inebriates Acts, 1879 to 1899 - - - - - - - 659
SECT. 28. Judicial Trustees Act, 1896 - - - - - - - 660
SECT. 29. Law of Distress (Amendment) Acts, 1888 and 1895 - 661
SECT. 30. Licensing Act, 1904 - - - - - - - - - 662
Sub-sect. 1. Jurisdiction - - - - - - - - 662
Sub-sect. 2. Procedure in References from Quarter Sessions - 663
Sub-sect. 3. Procedure on Application to Appoint a Receiver 664
SECT. 31. Literary and Scientific Institutions Act, 1854 - - - 665
SECT. 32. Loan Societies Act, 1840 - - - - - - - 666
SECT. 33. Local Loans Act, 1875 - - - - - - - - 666
SECT. 34. London Building Act, 1894 - - - - - - - 667
SECT. 35. Lunacy Act, 1890 - - - - - - - - - 669
SECT. 36. Married Women's Property Act, 1882 - - - - 670
SECT. 37. Municipal Elections (Corrupt and Illegal Practices) Act, 1884 - - - - - - - - - - - - 671
SECT. 38. Open Spaces Act, 1906 - - - - - - - - 672
SECT. 39. Parliamentary Elections (Returning Officers) Act, 1875; Local Government (England and Wales) Act, 1888 - 673
Sub-sect. 1. Jurisdiction - - - - - - - - 673
Sub-sect. 2. Procedure - - - - - - - - 673
Sub-sect. 3. Costs and Appeal - - - - - - - 674
SECT. 40. Partition Acts, 1868 and 1876 - - - - - - 675
SECT. 41. Pharmacy Acts, 1852 and 1868 - - - - - 676
SECT. 42. Poor Law Amendment Act, 1848 - - - - - 676
SECT. 43. Private Street Works Act, 1892 - - - - - 677
SECT. 44. Public Health Act, 1875; Public Health (London) Act, 1891 - - - - - - - - - - - - 677
SECT. 45. Public Trustee Act, 1906 - - - - - - - 679
SECT. 46. Riot (Damages) Act, 1886 - - - - - - - 680
SECT. 47. Rivers Pollution Prevention Acts, 1876 and 1893 - - 680
SECT. 48. Sale of Exhausted Parish Lands Act, 1876 - - - 682
SECT. 49. Settled Land Acts, 1822 to 1890 - - - - - 684
SECT. 50. Small Dwellings Acquisition Act, 1899 - - - - 685
SECT. 51. Solicitors Act, 1870 - - - - - - - - - 686
SECT. 52. Stannaries Court (Abolition) Act, 1896 - - - - 686
SECT. 53. Succession Duty Act, 1853 - - - - - - - 687
SECT. 54. Telegraph Acts, 1863 and 1878 - - - - - 688
SECT. 55. Tithe Act, 1891 - - - - - - - - - - 690
SECT. 56. Trustee Act, 1893 - - - - - - - - - - 691

For Admiralty Jurisdiction - - - *See title* ADMIRALTY.
Company Jurisdiction - - - ,, COMPANIES.
Courts Generally - - - - ,, COURTS.
Jurisdiction in Bankruptcy and under the Debtors Act - - - - - ,, BANKRUPTCY AND INSOLVENCY.
Liverpool Court of Passage - - ,, COURTS.
Mayor's Court of London - - - ,, MAYOR'S COURT, LONDON.
Practice and Procedure in High Court ,, PRACTICE AND PROCEDURE
Salford Hundred Court - - - ,, COURTS.

ABBREVIATIONS

USED IN THIS WORK.

A. C. (preceded by date) ..	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.* [1891] A. C.)
A.-G.	Attorney-General
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1811
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1831—1842
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826
Adv.-Gen.	Advocate-General
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649
Amb.	Ambler's Reports, Chancery, 2 vols., 1725—1783
And.	Anderson's Reports, Common Pleas, fol., 1 vol., 1535—1605
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740
Anon.	Anonymous
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani.
B. & Ad...	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870
Bac. Abr.	Bacon's Abridgment
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814

Bankr. & Ins. R. ..	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855
Bar. & Arn.	Barron & Arnold's Election Cases, 1 vol., 1843—1846
Bar. & Aust.	Barron & Austin's Election Cases, 1 vol., 1842
Barn. (CH.)	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741
Barn. (K. B.)	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846
Beaw.	Beawes's Lex Mercatoria
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860
Bell, Ct. of Sess. ..	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792
Bell, Ct. of Sess. fol. ..	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795
Bell, Dict. Dec. ..	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756
Benl.	Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol., 1 vol., 1515—1627
Ben. & D.	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—1579
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834
Bing. (N. C.)	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876
Bitt. Rep. in Ch. ..	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884
Bl. Com.	Blackstone's Commentaries
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821
Bli. (N. S.)	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804
Bos. & P. (N. R.) ..	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807
Bract.	Bracton De Legibus et Consuetudinibus Angliæ
Bro. Abr.	Sir J. Brooke's Abridgment
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872
Bro. (N. C.)	Sir R. Brooke's New Cases, 1 vol., 1515—1558
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800
Bro. Supp. to Mor. ..	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827

Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822
Brod. & F.	Brodrick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845
Brown. & Lush. ..	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840
C. A.	Court of Appeal
C. B.	Common Bench Reports, 18 vols., 1845—1856
C. B. (N. S.)	Common Bench Reports, New Series, 20 vols., 1856—1865
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—(current)
C. L. R.	Common Law Reports, 3 vols., 1853—1855
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols. 1823—1841
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885
Cald. Mag. Cas. ..	Caldecott's Magistrates Cases, 1 vol., 1777—1786
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1815—1853
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1843
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700
Cary	Cary's Reports, Chancery, 1 vol.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697
Cas. Pract. K. B. ..	Cases of Practice, King's Bench, 1 vol., 1655—1775
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1689—1727
Cas. *temp.* Finch ..	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680
Cas. *temp.* King ..	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733
Cas. *temp.* Talb.	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737
Ch. (preceded by date) ..	Law Reports, Chancery Division, since 1890 (*e.g.* [1891] 1 Ch.)
Ch. App.	Law Reports, Chancery Appeals, 10 vols., 1865—1875
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890

Ch. Rob...	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808
Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876
Char. Cham. Cas. ..	Charley's Chamber Cases, 1 vol., 1875—1876
Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846
Clay.	Clayton's Reports and Pleas of Assises at Yorke, 1 vol., 1631—1650
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833
Co. Ent.	Coke's Entries
Co. Inst...	Coke's Institutes
Co. Litt.	Coke on Littleton (1 Inst.)
Co. Rep.	Coke's Reports, 13 parts, 1572—1616
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846
Coll. Jurid. .. .	Collectanea Juridica, 2 vols.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740
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Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698
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You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832

TABLE OF STATUTES.

		PAGE
20 Hen. 3, c. 3.	(Statute of Merton, 1235)	219
c. 10.	(Provisions of Merton, 1235)	14
52 Hen. 3, c. 24.	(Statute of Marlborough, 1267)	262
3 Edw. 1, c. 9.	(Statute of Westminster the First, 1275)	238, 254
c. 10.	(Statute of Westminster the First, 1275)	219
4 Edw. 1, stat. 2.	(De Officio Coronatoris, 1276)	247, 262
13 Edw. 1, c. 1.	(De Donis, 1285)	70
18 Edw. 1, c. 1.	("Quia Emptores," 1290)	3, 37, 39, 113, 368
28 Edw. 1, c. 3.	(Jurisdiction of Coroners within verge of the King's Palace, 1300)	230
14 Edw. 3, st. 1, c. 8.	(Appointment of Escheators and Coroners, 1340)	219
28 Edw. 3, c. 6.	(Election of Coroners, 1354)	229
15 Ric. 2, c. 3.	(Admiral's Jurisdiction, 1391)	233
3 Hen. 7, c. 1.	(Coroner's Fee, 1487)	222, 254
19 Hen. 7, c. 7.	(Unlawful Statutes by Corporations, 1503)	338
1 Hen. 8, c. 7.	(Coroners Act, 1509)	222, 254
14 & 15 Hen. 8, c. 5.	(Physicians' Corporation, 1523)	318
27 Hen. 8, c. 10.	(Statute of Uses, 1535)	91
32 Hen. 8, c. 37.	(Recovery of Arrears of Rent by Executors, 1540)	70
33 Hen. 8, c. 12.	(Murder and Bloodshed within the Court, 1542), s. 3	230
c. 13.	(Wales)	218
c. 27.	(Leases of Corporations (Hospitals and Colleges), 1542)	346
39 Eliz. c. 5.	(Hospitals and Working Houses for the Poor, 1597)	315, 375
21 Jac. 1, c. 1.	(Perpetuation of 39 Eliz. c. 5, 1623)	315
c. 16.	(Limitation Act, 1623), s. 3	200, 206
1 Car. 1, c. 1.	(Sunday Observance Act, 1625)	86
12 Car. 2, c. 24.	(Abolition of Courts of Ward, Tenure of Knight's Service, 1660)—	
	s. 6	27
	s. 7	373
	s. 8	80
	s. 9	80
	s. 10	80
7 Ann. c. 20.	(Middlesex Registry Act, 1708), s. 17	114
8 Ann. c. 18.	(Landlord and Tenant (Distress), 1709)—	
	s. 1	44, 563
	s. 6	44
	s. 7	44
c. 19.	(Copyright Act, 1709)	137, 140, 202
9 Ann. c. 25.	(Municipal Offices Act, 1710)	226
12 Ann. stat. 2, c. 6.	(Mortuaries, 1713), s. 7	314
1 Geo. 1, stat. 2, c. 10.	(Queen Anne's Bounty Act, 1714), s. 4	306
6 Geo. 1, c. 18.	(Marine Insurance (Charters for Companies, 1719))	316
4 Geo. 2, c. 28.	(Landlord and Tenant Act, 1730), s. 1	59, 459
8 Geo. 2, c. 13.	(Engraving Copyright Act, 1734)	155
	s. 1	202, 203, 205
	s. 2	202
25 Geo. 2, c. 29.	(Coroners Act, 1752)	222, 240
	s. 1	227
	s. 6	252
7 Geo. 3, c. 38.	(Engraving Copyright Act, 1766)	203, 206
	s. 1	201
	s. 2	201
	s. 5	205

		PAGE
7 Geo. 3, c. 38.	(Engraving Copyright Act, 1766)—	
	s. 6	206
	s. 7	201
	s. 8	206
9 Geo. 3, c. 16.	(Crown Suits Act, 1769)	369
15 Geo. 3, c. 53.	(Copyright Act, 1775), s. 3	174
17 Geo. 3, c. 57.	(Prints Copyright Act, 1777)	201, 204
19 Geo. 3, c. 45.	(Duchy of Lancaster, 1779)	133
27 Geo. 3, c. 34.	(Duchy of Lancaster, 1787)	133
36 Geo. 3, c. 52.	(Legacy Duty Act, 1796), s. 6	378
39 Geo. 3, c. 73.	(Legacy Duty Act, 1799), s. 1	378
41 Geo. 3, c. 107.	(Copyright Act, 1801), s. 3	174
48 Geo. 3, c. 75.	(Burial of Drowned Persons Act, 1808)	243
54 Geo. 3, c. 56.	(Sculpture Copyright Act, 1814)—	
	s. 1	206, 207
	s. 3	209
	s. 4	207
	s. 5	208
	s. 6	207
57 Geo. 3, c. 93.	(Distress (Costs) Act, 1817), s. 2	428
59 Geo. 3, c. 12.	(Poor Relief Act, 1819), s. 17	105
c. 69.	(Foreign Enlistment Act, 1819)	391
4 Geo. 4, c. 60.	(Lotteries Act, 1823), ss 41—62, 67	391
6 Geo. 4, c. 50.	(Juries Act, 1825), s. 52	261
7 Geo. 4, c. 64.	(Criminal Law Act, 1826)	220
	s. 12	274
9 Geo. 4, c. 66.	(Nautical Almanack Act, 1828), s. 2	173
10 Geo. 4, c. 50.	(Crown Lands (General Management) Act, 1829)	132, 375
11 Geo. 4 & 1 Will. 4, c. 65.	(Infants' Property Act, 1830)—	
	s. 3	81
	s. 8	81
2 & 3 Will. 4, c. 71.	(Prescription Act, 1832), s. 1	8
3 & 4 Will. 4, c. 15.	(Dramatic Copyright Act, 1833)	186
	s. 1	175, 176, 177, 178, 183
	s. 2	181, 183, 185, 186, 187
	s. 3	186, 188
c. 27.	(Real Property Limitation Act, 1833)	46, 58, 106
	s. 1	44
	s. 2	44, 58
	s. 3	44
	s. 29	357
	s. 36	54
c. 42.	(Civil Procedure Act, 1833), s. 3	33
c. 74.	(Fines and Recoveries Act, 1833)	71, 650
	s. 1	71
	s. 50	71
	s. 51	72
	s. 52	72
	s. 53	72
	s. 54	72
	s. 77	108
	s. 79	650
c. 104.	(Administration of Estates Act, 1833)	70
c. 105.	(Dower Act, 1833)	79
c. 106.	(Inheritance Act, 1833), s. 9	87
4 & 5 Will. 4, c. 76.	(Poor Law Amendment Act, 1834), s. 58	677
5 & 6 Will. 4, c. 65.	(Lectures Copyright Act, 1835)	151
	s. 1	151
	s. 2	151
	s. 3	151
	s. 5	151
c. 76.	(Municipal Corporations Act, 1835)—	
	s. 14	339
	s. 62	225
6 & 7 Will. 4, c. 59.	(Prints and Engravings Copyright (Ireland) Act, 1836)	201
	s. 1	204
	s. 2	200
c. 79.	(Trinity House, 1836)	304

		PAGE
6 & 7 Will. 4, c. 86.	(Births and Deaths Registration Act, 1836)	271
c. 87.	(Liberties Act, 1836)	218
7 Will. 4 & 1 Vict. c. 22.	(Births and Deaths Registration Act, 1837)	271
c. 26.	(Wills Act, 1837)	36, 91, 371, 372
	s. 2	372
	s. 3	36, 75, 81, 87, 93, 99, 109
	s. 4	37, 99, 103, 105
	s. 5	15, 81, 99
	s. 6	75
	s. 7	109
	s. 28	69
c. 64.	(County of Durham Coroners, 1837)	218
c. 73.	(Chartered Companies Act, 1837)	304, 397
	s. 29	301, 315
1 & 2 Vict. c. 74.	(Small Tenements Recovery Act, 1838)	685
c. 110.	(Judgments Acts, 1838), s. 11	70
3 & 4 Vict. c. 97.	(Railway Regulation Act, 1840)—	
	s. 7	341
	s. 8	341
	s. 9	341
c. 110.	(Loan Societies Act, 1840)	666
	s. 3	666
	s. 16	666
	s. 17	666
4 & 5 Vict. c. 34.	(Copyhold Act, 1841)	127
5 & 6 Vict. c. 22.	(Queen's Prison Act, 1842), s. 19	229
c. 35.	(Income Tax Act, 1842), s. 163	377
c. 45.	(Copyright Act, 1842)	143, 144, 158, 177, 198, 206
	s. 1	174
	s. 2	137, 139, 140, 142, 157, 170, 175, 183
	s. 3	137, 140, 157
	s. 5	163
	s. 6	141, 174, 175
	s. 7	175
	s. 8	141, 175
	s. 10	141, 175
	s. 11	152, 155, 156, 159, 161, 180, 182
	s. 12	157, 180
	s. 13	152, 155, 159, 161, 180, 182
	s. 14	156, 180
	s. 15	161, 165, 166, 167, 169
	s. 16	166, 168
	s. 17	165, 167, 169, 170
	s. 18	147, 148, 149, 158
	s. 19	154
	s. 20	139, 176, 177, 179, 180, 181, 182, 186, 187, 188
	s. 22	182
	s. 23	167
	s. 24	152, 157, 179, 190
	s. 25	140, 157
	s. 26	157, 169, 175
	s. 27	174
	s. 29	140
	Sched.	153
6 & 7 Vict. c. 23.	(Copyhold Act, 1843)	127
c. 68.	(Theatres Act, 1843), s. 23	187
c. 73.	(Solicitors Act, 1843)	63
	s. 37	485
c. 83.	(Coroners Act, 1843), s. 2	274, 275, 277, 282
c. 96.	(Libel Act, 1843)—	
	s. 1	442, 487
	s. 2	442, 487, 495
7 & 8 Vict. c. 12.	(International Copyright Act, 1844)	170, 172, 181
	s. 3	167
	s. 19	141, 172, 206
c. 55.	(Copyhold Act, 1844)	127
c. 92.	(Coroners Act, 1844)—	
	s. 1	238

		PAGE
7 & 8 Vict. c. 92.	(Coroners Act, 1844)—	
	s. 2	214, 217, 238
	s. 3	214, 238
	s. 4	214, 238
	s. 5	215, 219, 238, 253
	s. 6	215, 238
	s. 8	221
	s. 19	215, 221, 238
	s. 20	215, 221, 238, 275
	s. 21	224, 238
	s. 27	213, 238
	s. 28	212, 238
	s. 29	229
c. 105.	(Duchy of Cornwall, 1844)	133
8 & 9 Vict. c. 16.	(Companies Clauses (Consolidation) Act, 1845)	361, 397
	s. 97	382, 385
	s. 135	471
c. 18.	(Land Clauses Consolidation Act, 1845)	28, 90, 397
	s. 6	379
	s. 8	130
	ss. 39, 40	250
	s. 80	107
	s. 95	29, 45, 129
	s. 96	129
	s. 97	129, 130, 380
	s. 98	129, 130
	s. 134	471
c. 20.	(Railways Clauses Consolidation Act, 1845), ss. 108, 109	341
	s. 138	471
c. 106.	(Real Property Act, 1845)	371, 372, 376
	s. 6	107
c. 109.	(Gaming Act, 1845)	485
c. 118.	(Inclosure Act, 1845)	48, 86
9 & 10 Vict. c. 70.	(Inclosure Act, 1846), s. 48	48
c. 95.	(County Courts Act, 1846)	410
	s. 2	411
	s. 14	11
	s. 23	423
	s. 58	428
	s. 79	580
	s. 88	580
10 & 11 Vict. c. 16.	(Commissioners Clauses Act, 1847)	358
c. 111.	(Inclosure Act, 1847), s. 6	86
11 & 12 Vict. c. 42.	(Indictable Offences Act, 1848)	292
	s. 11	267
c. 43.	(Summary Jurisdiction Act, 1848)—	
	s. 18	616
	s. 19	616
	s. 20	616
	s. 21	616
	s. 22	616
	s. 28	616
c. 44.	(Justices Protection Act, 1848), s. 10	491
c. 110.	(Poor Law (Amendment) Act, 1848)	676
	s. 8	677
13 & 14 Vict. c. 60.	(Trustee Act, 1850)	452
	s. 15	55
	s. 46	50
14 & 15 Vict. c. 100.	(Criminal Procedure Act, 1851)—	
	s. 19	617
	s. 24	274, 275, 282
	s. 25	282
	s. 30	274, 275, 282
	s. 164	617
c. 104.	(Episcopal and Capitular Estates Act, 1851)	121

		PAGE
14 & 15 Vict. c. 104.	(Episcopal and Capitular Estates Act, 1851)—	
	s. 6	131
	s. 11	131
15 & 16 Vict. c. 12.	(International Copyright Act, 1852)—	
	s. 6	172, 184
	s. 9	170, 172
	s. 10	172
	s. 14	201
c. 55.	(Trustee Act, 1852)	452
c. 56.	(Pharmacy Act, 1852)—	
	s. 12	676
	s. 13	676
c. lxxvii.	(London (City) Small Debts Extension Act, 1852)	412
	s. 39	449
16 & 17 Vict. c. 51.	(Succession Duty Act, 1853)	687
	s. 27	378
	s. 50	687
c. 137.	(Charitable Trusts Act, 1853)	642
	s. 17	640
	s. 18	640
	s. 32	640
	s. 34	640
	s. 35	640
	s. 36	641
	s. 37	641
	s. 38	641
	s. 39	642
	s. 40	642
	s. 41	640
	s. 42	640
	s. 43	641
17 & 18 Vict. c. 112.	(Literary and Scientific Institutions Act, 1854)	665
	s. 21	666
	s. 29	665
	s. 30	665
c. 116.	(Episcopal and Capitular Estates Act, 1854)	121
	s. 2	131
	s. 3	131
	s. 4	131
c. 125.	(Common Law Procedure Act, 1854)—	
	ss. 60—67	430
	s. 68	433
18 & 19 Vict. c. 67.	(Bills of Exchange Act, 1855)	447, 479, 489, 492
	s. 1	447, 448, 538
	s. 2	447, 489
	s. 3	448, 538
	s. 4	448
	s. 5	447, 538
	s. 6	479
c. 124.	(Charitable Trusts Amendment Act, 1855)—	
	s. 12	640
	s. 25	640
19 & 20 Vict. c. 108.	(County Courts Act, 1856), s. 36	585
c. 120.	(Settled Estates (Leases and Sales), 1856), s. 11	130
20 & 21 Vict. c. 57.	(Married Women's Reversionary Interests Act, 1857)	650
	s. 2	650
c. 77.	(Court of Probate Act, 1857)	644
	s. 3	11
	s. 45	644
	s. 56	645
	s. 58	646
	s. 59	645
	s. 81	380
c. 81.	(Burial Act, 1857), s. 25	263
c. cxlvii.	(Thames Conservancy Act, 1857), s. 2	305
c. clvii.	(Court of London Procedure Act, 1857)	450
21 & 22 Vict. c. 44.	(Universities and College Estates Act, 1858), s. 1	131, 132

		PAGE
21 & 22 Vict. c. 95.	(Court of Probate Act, 1858)—	
	s. 10	644, 645
	s. 12	645
	s. 15	380
23 & 24 Vict. c. 59.	(Universities and College Estates Extension Act, 1860)	114
c. 116.	(County Coroners Act, 1860)—	
	s. 4	223, 238
	s. 6	251
	s. 7	218, 238
	s. 8	238
	s. 9	229
	s. 10	238
c. 124.	(Ecclesiastical Commissioners Act, 1860)	121
c. 126.	(Common Law Procedure Act, 1860)—	
	ss. 28—31	430
	s. 126	429
c. 136.	(Charitable Trusts Act, 1860)—	
	s. 11	640
	s. 12	640
24 & 25 Vict. c. 96.	(Larceny Act, 1861)—	
	s. 70	421
	s. 100	6
c. 100.	(Offences against the Person Act, 1861), s. 6	276, 284
c. 101.	(Statute Law Revision Act, 1861)	207
c. 105.	(Ecclesiastical Leases Act, 1861), s. 3	131
25 & 26 Vict. c. 68.	(Fine Arts Copyright Act, 1862)	144, 155, 189, 198, 200, 201
	s. 1	143, 189, 190, 191, 192, 193, 196
	s. 2	193, 195
	s. 3	192
	s. 4	190, 195, 197
	s. 5	190, 196
	s. 6	199, 203
	s. 7	199, 200
	s. 8	199, 205
	s. 9	199
	s. 10	200
	s. 11	198, 199
c. 87.	(Provident Societies Act, 1862)	307
c. 89.	(Companies Act, 1862)	359
	s. 62	471
	s. 63	472
	s. 119	393
	s. 142	401
	s. 143	401
	s. 165	392
26 & 27 Vict. c. 112.	(Telegraph Act, 1863)	688
c. 125.	(Statute Law Revision Act, 1863)	262
27 & 28 Vict. c. 43.	(Government Annuities Act, 1864), s. 10	653
28 & 29 Vict. c. 126.	(Prison Act, 1865)	227, 241
30 & 31 Vict. c. 142.	(County Courts Act, 1867)—	
	s. 3	412
	s. 10	441
	s. 14	580
	s. 28	11
	s. 35	412
31 & 32 Vict. c. 24.	(Capital Punishment Amendment Act, 1868), s. 5	241, 271, 273, 279
c. 40.	(Partition Act, 1868)—	
	s. 4	675
	s. 9	675
	s. 12	445, 675
c. 72	(Promissory Oaths Act, 1868)—	
	s. 12	327
	s. 13	327
	s. 15	327

		PAGE
31 & 32 Vict. c. 89.	(Inclosure etc. Expenses Act, 1868)—	
	s. 3	656
	s. 4	657
c. 114.	(Ecclesiastical Commission Act, 1868)	121
c. 119.	(Regulation of Railways Act, 1868)—	
	s. 30	688
	s. 31	688
	s. 32	688
	s. 33	688
c. 121.	(Pharmacy Act, 1868), s, 15	676
33 & 34 Vict. c. 14.	(Naturalization Act, 1870), s. 2	66, 85
c. 15.	(County Courts (Buildings) Act, 1870)—	
	s. 3	414
	s. 4	414
	s. 8	414
c. 23.	(Forfeiture Act, 1870)	73, 279
	s. 1	49, 54
c. 28.	(Solicitors Act, 1870)—	
	s. 4	686
	s. 8	686
	s. 10	686
c. 75.	(Elementary Education Act, 1870), s. 30	381
c. 77.	(Juries Act, 1870)—	
	s. 8	261
	s. 9	251
	s. 10	261
	Sched.	251
c. 90.	(Foreign Enlistment Act, 1870)	391
c. 93.	(Married Women's Property Act, 1870), s. 10	670
34 & 35 Vict. c. 78.	(Railway Regulations Amendment Act, 1871)—	
	s. 7 (1)	622
	s. 8	244
35 & 36 Vict. c. 33.	(Ballot Act, 1872), Sched. I.	635
c. 77.	(Metalliferous Mines Regulation Act, 1872)—	246
	s. 3	245
	s. 11	245
	s. 19 (1)	260
	s. 22	245, 247, 256, 259
	(7)	260
c. 86.	(Borough and Local Courts of Record Act, 1872), s. 6	567
c. 94.	(Licensing Act, 1872), s. 72	339
36 & 37 Vict. c. 52.	(Intestates Act, 1873)	623
	s. 1	624
c. 66.	(Judicature Act, 1873)	166, 212, 232
	s. 12	212, 232
	s. 16	232
	s. 24	432
	(5)	433
	s. 25	432
	(8)	163
	s. 34	253
	s. 67	441
	s. 89	432, 434, 445, 550, 569
	s. 90	434
	s. 91	432
c. 76.	(Railway Regulation Act, 1873), s. 5	244
37 & 38 Vict. c. 42.	(Building Societies Act, 1874)	611, 637
	s. 3	638
	s. 4	637
	s. 9	638
	s. 23	638
	s. 24	638
	s. 27	638
	s. 32 (4)	637
	s. 34	638, 639
	s. 35 (1)	638
	(2)	638
	s. 36	639

		PAGE
37 & 38 Vict. c. 48.	(Hosiery Manufacture (Wages) Act, 1874)—	
	s. 3	655
	s. 4	655
c. 57.	(Real Property Limitation Act, 1874)	46, 58, 106
	s. 1	52
	s. 2	106
	s. 8	553
	s. 9	52, 106
c. 68.	(Solicitors Act, 1874), s. 12	584
c. 88.	(Births and Deaths Registration Act, 1874)—	
	s. 16	272
	s. 17	272
	s. 36	272
	s. 37	271
	s. 45	272
	s. 47	271
38 Vict. c. 17.	(Explosives Act, 1875)	245, 622
	s. 3	245
	s. 63	245
	s. 65	245
	s. 85	245
38 & 39 Vict. c. 27.	(Intestates Act, 1875), s. 1	624
c. 55.	(Public Health Act, 1875)	340, 386, 677, 678
	s. 104	678
	s. 106	678
	s. 143	269
	s. 173	380
	s. 174	380, 384, 386
	s. 261	677, 678
c. 60.	(Friendly Societies Act, 1875)	358
c. 66.	(Statute Law Revision Act, 1875)	279, 283
c. 77.	(Judicature Act, 1875), s. 10	432
c. 83.	(Local Loans Act, 1875)	666
	s. 12	667
	s. 25	667
c. 84.	(Parliamentary Elections (Returning Officers) Act, 1875)—	
	s. 4	673, 674
	s. 5	673, 674
c. 90.	(Employers and Workmen Act, 1875)	646
	s. 3	647
	(1)	647
	(2)	647
	(3)	647
	s. 8	647
	s. 10	646
39 & 40 Vict. c. 17.	(Partition Act, 1876)—	
	s. 3	675
	s. 4 (3)	675
c. 18.	(Treasury Solicitor Act, 1876), s. 1	305
c. 36.	(Customs Consolidation Act, 1876)	622
	ss. 42—45	170
	s. 152	169
	s. 284	622
c. 56.	(Commons Act, 1876)	643
	s. 30	644
c. 62.	(Sale of Exhausted Parish Lands Act, 1876)—	
	s. 1	682
	s. 2	682
c. 75.	(Rivers Pollution Prevention Act, 1876)	680
	s. 8	681
	s. 10	681
	s. 11	681, 682
40 & 41 Vict. c. 18.	(Settled Estates Act, 1877)	52
	s. 9	53
	s. 16	130
c. 21.	(Prison Act, 1877)	227
	s. 5	241
	s. 30	241
c. 33.	(Contingent Remainders Act, 1877)	77

		PAGE
41 & 42 Vict. c. 31.	(Bills of Sale Act, 1878)	623
	s. 10	622
c. 71.	(Metropolitan Commons Act, 1878)	644
c. 76.	(Telegraph Act, 1878), s. 4	688, 690
c. 77.	(Highways and Locomotives (Amendment) Act, 1878), s. 23	594, 655
42 & 43 Vict. c. 19.	(Habitual Drunkards Act, 1879)	659
	s. 3	243, 659
	s. 18	660
	s. 27	243
c. 22.	(Prosecution of Offences Act, 1879), s. 5	279, 290
c. 49.	(Summary Jurisdiction Act, 1879)—	
	s. 5	616
	s. 21	616
c. 59.	(Civil Procedure Acts, Repeal Act, 1879)	250
c. 78.	(Judicature (Officers) Act, 1879)	420
	s. 9 (2)	229
43 & 44 Vict. c. 19.	(Taxes Management Act, 1880), s. 88	564
c. 41.	(Burial Laws Amendment Act, 1880), s. 11	273
c. 42.	(Employers Liability Act, 1880)	579, 594, 611, 624
	s. 4	485
44 & 45 Vict. c. 2.	(Burial and Registration Acts (Doubts Removal) Act, 1881)	273
c. 41.	(Conveyancing Act, 1881)	4, 120
	s. 2 (iii.)	4
	s. 6 (3)	19
	(4)	19
	(5)	19
	s. 21 (2)	428
	s. 30	88
	s. 44	59
	s. 51	69, 371
c. 58.	(Army Act, 1881)—	
	s. 112	634
	s. 115 (1)	634
	(4)	634, 635
	Sched. III.	634
c. 60.	(Newspaper Libel and Registration Act, 1881)	154
c. 64.	(Central Criminal Court (Prisons) Act, 1881), s. 2 (5)	241
45 & 46 Vict. c. 19.	(Interments (felo de se) Act, 1882), s. 2	273
c. 38.	(Settled Land Act, 1882)	4, 52, 684
	s. 2	69
	(v.)	4
	(10) (vi.)	53
	s. 3	69, 131
	(2)	19, 130
	(3)	19
	(4)	19
	s. 4	131
	(7)	130
	s. 6	131
	s. 7	131
	s. 8	131
	s. 9	131
	s. 10	131
	s. 12	131
	s. 13	131
	s. 14	53, 131
	s. 16	131
	s. 17	131
	s. 18	130
	s. 20	104, 108
	(2) (iii.)	62, 108
	(3)	62, 081
	s. 21 (5)	69, 73, 301
	s. 22	130
	(2)	130
	s. 31	131

		PAGE
45 & 46 Vict. c. 38.	(Settled Land Act, 1882)—	
	s. 34	131
	s. 38	130
	s. 46 (10)	684
	s. 55	131
c. 39.	(Conveyancing Act, 1882)	4
	s. 7	650
c. 40.	(Copyright (Musical Compositions) Act, 1882)—	
	s. 1	177
	s. 2	178
	s. 3	178, 187
	s. 4	185
c. 43.	(Bills of Sale Act Amendment Act, 1882)	622
	s. 11	623
c. 50.	(Municipal Corporations Act, 1882)	228, 236, 340
	s. 8	307
	s. 12 (1)	327
	s. 13	328
	s. 14	328
	s. 17 (1)	327
	s. 18 (1)	327
	s. 24	340
	s. 25 (2)	327
	s. 70 (2)	354
	s. 107	370
	s. 171	218, 225
	(1)	225, 226, 327
	(2)	226, 228
	(3)	226
	(4)	227
	s. 172	236
	s. 247	339
	Sched. I.	354
	Sched. IV.	227
	Sched. V.	227
c. 51.	(Government Annuities Act, 1882), s. 12 (1)	653
c. 61.	(Bills of Exchange Act, 1882)—	
	s. 22 (1)	361
	(2)	362
	s. 91 (2)	362, 382
c. 75.	(Married Women's Property Act, 1882)	66, 85, 96, 455, 626, 670
	s. 1	14, 49, 83
	s. 2	83
	s. 5	83
	s. 11	670
	s. 17	671
c. 80.	(Allotments Extension Act, 1882), s. 4	634
46 & 47 Vict. c. 49.	(Statute Law Revision and Civil Procedure Act, 1883)	621
	s. 3	447
	s. 7	430, 447
c. 51.	(Illegal Practices Prevention Act, 1883)—	
	s. 29 (3)	624
	(5)	624
	(7)	624
	(8)	624
c. 52.	(Bankruptcy Act, 1883)—	
	s. 21	393
	s. 44	158
	s. 46 (2)	563
	s. 50	89
	s. 56	73
	(5)	73
	s. 57	73
	s. 58	73
	s. 59	73
	s. 60	73
	s. 61	73

		PAGE
46 & 47 Vict. c. 52.	(Bankruptcy Act, 1883)—	
	s. 62	73
	s. 63	73
	s. 64	73
	s. 65	73
	s. 66	73
	s. 67	73
	s. 68	73, 158
	s. 69	73
	s. 70	73
	s. 71	73
	s. 72	73
	s. 73	73
	s. 96	623
	s. 122	560, 562
	s. 145	566
	s. 168	393, 563, 566
	Sched. III.	661
47 & 48 Vict. c. 18.	(Settled Land Act, 1884)	4, 684
	s. 4	131
c. 41.	(Building Societies Act, 1884), s. 2	638
c. 56.	(Chartered Companies Act, 1884)	304
	s. 1	315
c. 61.	(Judicature Act, 1884)—	
	s. 18	434, 443
	s. 24	617
c. 70.	(Municipal Elections (Corrupt and Illegal Practices) Act, 1884)—	
	s. 21 (1)	671
	(6)	672
	(8)	672
c. 71.	(Intestates' Estates Act, 1884)—	
	s. 4	55
	s. 7	55
48 & 49 Vict. c. 51.	(Customs and Inland Revenue Act, 1885)—	
	s. 11	378
	(6)	378
	(7)	378
	s. 14	378
	s. 15	378
49 & 50 Vict. c. 20.	(Burial of Drowned Persons Act, 1886)	243
c. 27.	(Guardianship of Infants Act, 1886)	80, 654
	s. 2	654
	s. 3 (1)	654
	(2)	654
	(3)	654
	s. 5	654
	s. 9	654
	s. 10	654
c. 33.	(International Copyright Act, 1886)	139, 141, 170
	s. 2 (3)	140, 190
	s. 5	149
	(3)	150
	s. 6	172, 184
	s. 7	142
	s. 8	141, 178, 179, 188, 189, 191, 195, 200
	(1)	157
	(1) (b)	174
	(2)	142, 157, 180
	(4)	140
	s. 11	138, 141, 166, 179, 188
	s. 12 (b)	172
c. 38.	(Riot (Damages) Act, 1886)	680
	s. 2	680
	s. 3	680
	s. 4	680
	(1)	680
c. 54.	(Extraordinary Tithe Redemption Act, 1886)	647
	s. 4 (5)	647

		PAGE
49 & 50 Vict. c. 57.	(Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886), s. 1	674, 675
50 & 51 Vict. c. 26.	(Allotments and Cottage Gardens (Compensation for Crops) Act, 1887)	625, 633
	s. 5	633
	s. 6	633
	s. 7	633
	s. 17	633
c. 30.	(Settled Land Acts Amendment Act, 1887)	4, 684
c. 57.	(Deeds of Arrangement Act, 1887)	623
	s. 13 (1)	623
	(2)	623
c. 58.	(Coal Mines Regulation Act, 1887)	246
	s. 27	622
	s. 35	245
	s. 47 (18)	622
	s. 48	245, 247, 256, 259
	(7)	260
c. 59.	(Statute Law Revision Act, 1887)	326, 354
c. 61.	(Local Government (Boundaries) Act, 1887), s. 2 (1) (b)	221
c. 71.	(Coroners Act, 1887)	228, 237, 262
	s. 3	259
	(1)	220, 239, 261
	(2)	241, 260
	(3)	262
	s. 4	255
	(1)	263, 284, 285
	(2)	267
	(3)	270, 276
	(4)	271, 276
	(5)	262, 270, 271
	s. 5	255
	(1)	289
	(2)	289
	(3)	279, 290
	s. 6	241, 283, 288
	(1)	255
	(1) (b)	265
	(3)	263
	s. 7	256, 274
	(1)	220, 221, 234
	(2)	226, 254
	(3)	220, 226
	s. 8 (1)	224, 228, 251
	(2)	224, 228, 235, 252
	s. 9	255, 291
	s. 10 (1)	255
	(2)	255
	(3)	255
	s. 12	219, 253
	s. 15	224, 249
	s. 16	224, 228
	s. 17	224, 228
	s. 18 (1)	273, 277
	(2)	273, 278, 284
	(3)	271
	(4)	289
	(5)	224, 291
	(6)	272
	s. 19 (2)	266, 267
	(3)	261, 266, 267
	(4)	266
	(5)	266, 290
	s. 20	281, 283
	(1)	274, 275, 277
	s. 21 (1)	268
	(3)	255, 269
	s. 22	294

		PAGE
50 & 51 Vict. c. 71.	(Coroners Act, 1887)—	
	s. 23	269
	s. 24	269
	s. 25	224, 293
	s. 26	224, 294
	s. 27	224, 294, 295
	(2)	227
	s. 28	224, 296
	s. 29 (1)	230
	(2)	221, 230
	(3)	231, 260
	(4)	230
	(5)	231, 289
	(6)	231
	(7)	230
	(8)	231
	(9)	231
	s. 30 (1)	235, 295
	(2)	235
	(3)	229, 234, 235
	(4)	234, 236, 237, 251, 290
	s. 31	235, 295
	s. 32	235
	s. 33	226, 228
	s. 34	212
	s. 35	235, 251, 252, 281, 283, 287
	s. 36	247
	s. 37	263, 288, 289
	s. 38	213, 218
	s. 39 (1)	216, 251
	(2)	214
	s. 40 (1)	221, 295
	(2)	295
	(3)	296
	s. 41	293
	(a)	293
	(b)	293, 294
	(c)	295
	s. 42	220, 229, 271
	s. 43	212, 222, 224
	s. 44	238
	s. 45	215, 227, 238, 239, 247, 259, 272, 297
	(2)	273
	Sched. I.	215
	Sched. II.	216, 262, 263, 288, 289
	Sched. III.	215, 238
c. 73.	(Copyhold Act, 1887)	88
51 & 52 Vict. c. 17.	(Copyright (Musical Compositions) Act, 1888)—	
	s. 1	188
	s. 2	188
c. 19.	(Inebriates Act, 1888)	659
c. 21.	(Law of Distress Amendment Act, 1888)	661
	s. 7	661
	(2)	661
	s. 8	661
c. 41	(Local Government Act, 1888)	213, 225, 236, 326
	s. 3 (10)	234
	(xi.)	214, 215, 222, 224, 234, 293, 294
	s. 4 (7)	327
	s. 5	234
	(1)	215, 216, 218, 219
	(2)	217
	(3)	217, 223
	(4)	217, 223, 236
	(5)	216
	(6)	215
	(7)	219
	s. 34 (4)	218, 236
	(5)	218

		PAGE
51 & 52 Vict. c. 41.	(Local Government Act, 1888)—	
	s. 37	225
	s. 38	220, 225
	(2)	225
	(a)	225, 227
	(5)	225
	s. 46 (3)	223
	s. 53	221
	s. 59	234
	s. 75 (19)	673
	s. 78 (2)	216, 294
	s. 100	217
	s. 109	236
	s. 114 (2)	213
	s. 126	225
c. 42.	(Mortmain and Charitable Uses Act, 1888)	367, 368
	s. 1 (i.)	367, 368
	(ii.)	367
	(2) (i.)	368
	(ii.)	368
	(iii.)	368
	(iv.)	368
	s. 2	369
	s. 3	369
	s. 6 (1)	368
	(2)	369
	(3)	368
	(4) (i.)	368
	(iv.)	368
	s. 12	370
c. 43.	(County Courts Acts, 1888)	411, 578, 650, 682
	s. 3	411
	s. 4	411
	s. 5	411, 414
	s. 6	11, 412
	s. 7	412
	s. 8	415
	s. 9	433, 524
	s. 10	413
	s. 11	413
	s. 12	412, 414
	s. 13	412, 414
	s. 14	415
	s. 15	415
	s. 16	415
	s. 17	415
	s. 18	416
	s. 19	416, 417
	s. 20	416
	s. 21	417
	s. 22	415
	s. 23	417
	s. 24	417
	s. 25	417
	s. 26	418
	s. 27	418
	s. 28	418, 535
	s. 29	419
	s. 30	419
	s. 31	419, 420
	s. 32	420
	s. 33	421
	s. 34	421
	s. 35	422, 425, 468, 469
	s. 36	421
	s. 37	417, 421
	s. 38	423
	s. 39	423
	s. 40	423

		PAGE
51 & 52 Vict. c. 43.	(County Courts Act, 1888)—	
	s. 41	417, 423
	s. 42	424
	s. 43	424
	s. 44	421
	s. 45	417, 420
	s. 46	422
	s. 47	421, 422
	s. 48	427
	s. 49	425
	s. 50	424
	s. 51	424
	s. 52	426
	s. 54	427, 485
	s. 55	426
	s. 56	428, 430, 431, 432
	s. 57	429
	s. 58	445
	s. 59	435, 591
	s. 60	438, 591
	s. 61	435, 591
	s. 62	490
	s. 63	430
	s. 64	435, 525, 594, 602
	s. 65	429, 586, 602
	s. 66	429, 439, 441, 442, 586
	s. 67	442, 443, 445, 498, 691
	(1)	444
	(2)	444, 679
	(3)	444, 679
	(4)	444, 679
	(5)	445, 498, 670, 679, 692
	(6)	445
	(7)	445
	(8)	446
	s. 68	446, 447
	s. 69	443, 586
	s. 70	419, 498, 691, 692
	s. 71	419, 499, 669
	s. 72	525, 526, 583
	s. 73	418, 460, 464
	s. 74	448, 450, 492, 571, 684
	s. 75	453, 483, 670
	(1)	452, 683
	(2)	452, 691
	(3)	452
	(4)	453
	s. 76	422
	s. 77	472, 558
	s. 78	426
	s. 79	528
	s. 80	592
	s. 81	459
	s. 82	485
	s. 83	519
	s. 84	411, 449
	s. 85	441, 483
	s. 86	465, 488
	(5)	473
	(6)	466
	s. 87	439, 508, 528
	s. 88	526, 538, 579, 600
	s. 89	526, 579, 600
	s. 90	419, 527, 528, 538
	s. 91	527, 528
	s. 92	419, 529
	s. 93	534, 538
	s. 94	511
	s. 95	454, 546

		PAGE
51 & 52 Vict. c. 43.	(County Courts Act, 1888)—	
	s. 96	455, 601
	s. 97	454
	s. 98	501
	s. 99	501
	s. 100	520, 528
	s. 101	521, 522
	s. 102	522, 533
	s. 103	523
	s. 104	525
	s. 105	539
	s. 106	528
	s. 107	493, 593
	s. 108	600
	s. 110	529
	s. 111	530
	s. 112	531
	s. 113	528, 551, 578, 579, 587, 588, 590, 593, 666
	s. 114	435, 539, 580
	s. 115	580
	s. 116	586, 587, 591, 592
	s. 118	585, 597
	s. 119	581, 585, 589, 592, 594
	s. 120	575, 601, 602, 604, 631, 633, 634, 635, 637, 639, 644, 646, 647, 648, 650, 653, 655, 656, 657, 659, 660, 667, 668, 670, 671, 672, 676, 677, 680, 684, 685, 686, 691, 693
	s. 121	605
	s. 122	608
	s. 126	610
	s. 127	614
	s. 128	614
	s. 129	611
	s. 130	611
	s. 131	614
	s. 132	611
	s. 133	429
	s. 134	429
	s. 135	429
	s. 136	429
	s. 137	429
	s. 138	436, 569, 592, 656, 685
	s. 139	437, 569, 592, 656, 685
	s. 140	469, 656, 685
	s. 141	469, 656, 685
	s. 142	656, 685
	s. 143	656, 685
	s. 144	426, 656, 685
	s. 145	582, 656, 685
	s. 146	551, 555, 559, 570, 600, 670
	s. 147	560, 670
	s. 148	560, 670
	s. 149	552, 670
	s. 150	553, 670
	s. 151	550, 560, 670
	s. 152	560, 670
	s. 153	561, 670
	s. 154	564, 565, 670
	s. 155	555, 561, 670
	s. 156	563, 670
	s. 157	563, 670
	s. 158	561, 567, 568, 670
	s. 159	421, 565, 670
	s. 160	564, 670
	s. 162	616, 670
	s. 163	616, 670
	s. 164	538
	s. 165	618

		PAGE
51 & 52 Vict. c. 43.	(County Courts Act, 1888)—	
	s. 156	618
	s. 167	427, 616
	s. 168	418
	s. 169	418
	s. 170	418, 423
	s. 171	418, 423
	s. 172	423
	s. 174	411
	s. 176	412
	s. 177	412
	s. 178	423
	s. 179	414
	s. 180	621
	s. 181	414
	s. 183	548
	s. 184	650
	s. 185	412
	s. 186	437, 453, 622
	s. 187	621
	s. 188 (4), (a)	411
c. 46.	(Oaths Act, 1888)	263
c. 64.	(Law of Libel Amendment Act, 1888)—	
	s. 3	268
c. xxxviii.	(City of London Fire Inquests Act, 1888)—	
	s. 2	296
	s. 3	296
	s. 4	297
	s. 5	297
	s. 6	297
	s. 7	297
	s. 8	297
	s. 9	297
52 & 53 Vict. c. 36.	(Settled Land Act, 1889), s. 4	684
	s. 2	131
	s. 3	131
c. 42.	(Revenue Act, 1889), s. 1	170
c. 49.	(Arbitration Act, 1889)	685
c. 63.	(Interpretation Act, 1889)	621
	s. 6	621
	s. 19	357
	s. 38 (2)	50
	s. 42	357
53 Vict. c. 5.	(Lunacy Act, 1890)	669
	s. 4	669
	s. 5	669
	s. 6	669
	s. 7	669
	s. 8	669
	s. 9 (1)	669
	s. 84	242
	s. 116	66
	s. 125	66, 105
	s. 126	66, 105
	s. 132 (1)	669
	(2)	669
	(3)	669
	s. 300	670
	s. 319	242
	s. 341	242
53 & 54 Vict. c. 39.	(Partnership Act, 1890)—	
	s. 23	557
	(2)	556, 590
	(3)	557
c. 57.	(Tenants Compensation Act, 1890), s. 2	633
c. 63.	(Companies (Winding-up) Act, 1890)	637
c. 69.	(Settled Land Act, 1890)	4, 684
	s. 5	131
	s. 8	131

		PAGE
53 & 54 Vict. c. 69.	(Settled Land Act, 1890)—	
	s. 9	131
c. 70.	(Housing of the Working Classes Act, 1890)	656
	s. 32 (3)	656
c. 71.	(Bankruptcy Act, 1890)—	
	s. 11 (1)	563
	(2)	559, 562, 563, 566
	s. 12	566
	s. 31 (2)	566
54 Vict. c. 8.	(Tithe Act, 1891)	690
	s. 2 (1)	690
	s. 3	690
	s. 5 (2)	691
	s. 6	690
	(2)	690
	s. 7	691
	s. 8	690
	(1)	690
c. 17.	(Charitable Trusts (Recovery) Act, 1891)	642
	s. 2	642
	s. 3	643
	s. 4	643
	s. 5	643
54 & 55 Vict. c. 39.	(Stamp Act, 1891)	95, 101
	s. 54	159
	s. 65	17, 63, 105
	s. 66	63, 105
	s. 67	14, 15, 63, 105
	s. 68	64, 105
c. 40.	(Brine Pumping (Compensation for Subsidence) Act, 1891)	636
	s. 26	636
	s. 27 (1)	636
	(2)	636
	(3)	636
	(6)	637
	(7)	637
	s. 29	636
c. 65.	(Lunacy Act, 1891), s. 27 (4)	66
c. 67.	(Statute Law Revision Act, 1891)	238
c. 73.	(Mortmain and Charitable Uses Act, 1891), s. 3	367
c. 76.	(Public Health (London) Act, 1891)	678
	s. 11	678
	s. 88	269
	s. 90 (1)	269
	(2)	269
	s. 92	257
	s. 93 (1), (2), (4)	257
	s. 117 (2)	678
55 Vict. c. 11.	(Mortmain and Charitable Uses Act Amendment Act, 1892)—	
	s. 1	368, 369
	s. 2	368
55 & 56 Vict. c. 9.	(Gaming Act, 1892), s. 1	485
c. 13.	(Conveyancing Act, 1892)	4
c. 19.	(Statute Law Revision Act, 1892)	495
c. 56.	(Coroners Act, 1892)—	
	s. 1	237
	(1)	236
	(2)	236
	(3)	236
	(4)	237
	(5)	237
	(6)	217, 226
	(7)	236
	(8)	236
	s. 3	237
c. 57.	(Private Street Works Act, 1892)	677
	s. 1	677

		PAGE
55 & 56 Vict. c. 57.	(Private Street Works Act, 1892)—	
	s. 2	677
	s. 14	677
c. 59.	(Telegraph Act, 1892)—	
	s. 5 (1)	688
	(2)	688
56 Vict. c. 14	(Statute Law Revision Act, 1893)	156
56 & 57 Vict. c. 21.	(Voluntary Conveyances Act, 1893)	70, 93
c. 31.	(Rivers Pollution Prevention Act, 1893)	680
c. 39.	(Industrial and Provident Societies Act, 1893)—	
	s. 47	658
	s. 48	658
	s. 49 (1)	658
	(4)	658
	(5)	658
	s. 58 (b)	658
	s. 61 (e)	658
	s. 66	309
	s. 231	657
c. 53.	(Trustee Act, 1893)	445, 691
	s. 12 (3)	88
	s. 25	691
	s. 26	88
	(5)	55
	s. 26—40	691
	s. 29	55
	s. 33	89, 106
	s. 34	88, 89
	s. 42	498, 691, 692
	s. 46	691
	s. 50	55
	s. 51	50, 55
c. 61.	(Public Authorities Protection Act, 1893)	157, 426
	s. 1	464, 585
	s. 2	169, 585
c. 63.	(Married Women's Property Act, 1893), s. 2	535
c. 66.	(Rules Publication Act, 1893)	617
c. 71.	(Sale of Goods Act, 1893)—	
	s. 4	485
	s. 26	556, 558
c. 73.	(Local Government Act, 1894)	320
	s. 3 (1)	322
	s. 3 (9)	307
	s. 24 (7)	307
	s. 46	327
57 & 58 Vict. c. 16.	(Judicature Act, 1894)—	
	s. 1 (5)	609
	(6)	609
c. 30.	(Finance Act, 1894)	648, 687
	s. 1	648
	s. 2	648
	(1) (b)	378
	s. 3	648
	s. 4	648
	s. 5	648
	s. 10 (1)	648
	(5)	648
	s. 14 (2)	649
	s. 15 (2)	378
c. 46.	(Copyhold Act, 1894)	52, 114
	s. 1	114
	s. 2	45, 46, 114
	s. 3	118
	s. 4	118
	s. 5	119
	(1) (2) (b) (t)	123
	(2) (c) (ii.)	123
	(3)	123
	s. 5 (4)	123

		PAGE
57 & 58 Vict. c. 46.	(Copyhold Act, 1894)—	
	(5)	123
	(6)	123
	(7)	123
	(8)	123
	(9)	123
	s. 6	123
	s. 7	124
	(8)	124
	(9)	124
	s. 8	119
	s. 9	119
	s. 10 (1)	125
	(2)	125
	(3)	125
	(4)	125
	(5)	126
	(6)	125
	s. 11	115
	s. 12	115
	s. 13	115
	s. 14 (1)	115
	(2)	115
	(3)	118
	s. 15 (1)	119
	(2)	119
	(3)	119
	s. 16 (1)	116
	(2)	116
	(3)	116
	s. 17	120
	s. 19	120
	s. 20	120
	s. 21	127
	(1) (a)	126
	(1) (b)	56, 126
	(1) (c)	10
	(1) (c) (i.)	126
	(1) (c) (ii.)	126
	(2)	73
	s. 22	127
	s. 23	127
	(1)	127
	(2)	117
	s. 24	127
	s. 25	122
	s. 26 (1)	122
	(5)	122
	s. 27 (a)	120
	(b)	120
	(c)	120
	(d)	120
	(e)	59, 120
	s. 28	120
	s. 29	120
	s. 30	121
	s. 31	121
	s. 32	121
	(2)	122
	(3)	122
	(4)	128
	s. 33	121, 122
	s. 34 (1)	124
	(2)	124
	(3)	124
	(4)	124
	(5)	125
	(6)	125
	s. 35	125

		PAGE
57 & 58 Vict. c. 46.	(Copyhold Act, 1894)—	
	s. 36	122, 125
	s. 37	125
	s. 38	122
	s. 39	122
	s. 40	122
	s. 41	122
	(7)	59
	s. 43	115, 116
	s. 44	115, 116
	s. 45	116
	s. 46	116
	s. 47	117
	s. 48	117
	s. 49	28, 45, 117
	s. 50	117
	s. 51 (1)	118
	(2)	118
	(3)	119
	s. 52	128
	s. 53 (1)	128
	(2)	128
	s. 54	129
	s. 55	125
	s. 56	126, 127
	s. 57	118
	s. 58 (1)	124
	(2)	126
	s. 59	125
	s. 60	126
	(4)	125
	s. 61 (1)	126
	(2)	126
	s. 62	17
	s. 64	16, 17
	s. 66	123
	s. 67	128
	s. 68	133
	s. 69	133
	s. 70	133
	s. 71	133
	s. 72	112, 116
	s. 73	118
	s. 74	121
	s. 75	121
	s. 76	134
	s. 77	122
	s. 78	132
	s. 81 (1)	85
	(3)	85
	s. 82	11
	s. 83	11, 61, 84
	s. 84	101
	(1)	61
	s. 85	15, 95
	(1)	101
	(3)	64
	s. 86	53
	(1)	62
	(4)	53
	(5)	54
	s. 87	69
	s. 88	88
	s. 89 (1)	112
	(2)	112
	(3)	112
	s. 91	128
	s. 92	128
	s. 93	128

		PAGE
57 & 58 Vict. c. 46.	(Copyhold Act, 1894)—	
	s. 94	4
	s. 95 (f)	129, 132
	(g)	134
	s. 96	114, 129
	(b)	132
	s. 97	114
	(2)	115
	(3)	115
	(4)	115
	(5)	115
	(6)	115
	(7)	115
	(8)	115
	(9)	115
	s. 98	129
	s. 100	114
	Sched. II.	119
c. 47.	(Building Societies Act, 1894), s. 8	637
c. 60.	(Merchant Shipping Act, 1894)	7
	s. 510	6
c. ccxiii.	(London Building Act, 1894)	667
	s. 5 (31)	667
	(32)	667
	s. 91	668
	(2)	667, 668
	(5)	668
	s. 94	667, 668
	s. 168	667, 668
	s. 196	668
58 & 59 Vict. c. 24.	(Law of Distress Amendment Act, 1895)	661
59 & 60 Vict. c. 25.	(Friendly Societies Act, 1896)	643, 651
	s. 31 (1)	651
	(2)	651
	s. 54	651
	s. 55 (1)	651
	(2)	651, 653
	s. 68 (1)	651
	(5)	651
	(6)	652
	(7)	652
	(8)	651
	s. 70 (7)	652
	s. 78 (2)	652
	s. 83 (1)	652
	s. 94	652
c. 26.	(Industrial Assurance Companies Act, 1896)	643, 651
	s. 7	643
c. 28.	(Finance Act, 1896)	687
	s. 22	650
c. 35.	(Judicial Trustees Act, 1896)	445, 660
	s. 1	661
	s. 2	661
	s. 4	661
c. 45.	(Stannaries Court Abolition Act, 1896), s. 1	412, 686
60 & 61 Vict. c. 37.	(Workmen's Compensation Act, 1897)	579
c. 39.	(Yorkshire Coroners Act, 1897)	212, 217, 293
c. 57.	(Infant Life Protection Act, 1897)—	
	s. 2 (1)	243
	s. 5	243
	s. 8	243
	s. 9	243
	s. 11 (1)	243
c. 65.	(Land Transfer Act, 1897)	70, 89
	s. 2 (1)	89
61 & 62 Vict. c. 29.	(Locomotives Act, 1898)	655
	s. 12	594
	(1) (a)	655
	(b)	655

		PAGE
61 & 62 Vict. c. 55.	(Universities and College Estates Act, 1898)—	
	s. 2	132
	s. 8	131, 132
	Sched. I.	131
c. 60.	(Inebriates Act, 1898)	243, 659, 660
	s. 12 (1)	660
	s. 19	243
62 & 63 Vict. c. 20.	(Bodies Corporate (Joint Tenancy) Act, 1899)	366, 375
c. 35.	(Inebriates Act, 1899)	659
c. 44.	(Small Dwellings Acquisition Act, 1899)—	
	s. 1	685
	s. 3 (3)	685
	(4)	685
	(5)	685
	s. 5 (2) (b)	685
	(5)	685
c. 48.	(Lincolnshire Coroners Act, 1899)	212, 217, 293
63 & 64 Vict. c. 27.	(Railway Employment (Prevention of Accidents) Act, 1900), s. 13	244
c. 47.	(County Courts (Investment) Act, 1900), s. 1	497
c. 51.	(Money Lenders Act, 1900)	486, 582, 588, 594
1 Edw. 7, c. 22	(Factory and Workshop Act, 1901)—	
	s. 14 (1)	648
	(2)	648
	(3)	648
	(4)	648
	s. 21 (1)	244
	(2)	259
	s. 149	244
2 Edw. 7, c. 15	(Musical (Summary Proceedings) Copyright Act, 1902)	170
c. 42.	(Education Act, 1902)—	
	s. 23 (5)	368
	s. 25	381
	Sched. IV., Part II.	381
c. 78	(Licensing Act, 1902), s. 21	257
3 Edw. 7 c. 31.	(Board of Agriculture and Fisheries Act), 1903)	48
	s. 1	85, 128
c. 39.	(Housing of the Working Classes Act, 1903)	656
	s. 10	656
c. 42.	(County Courts Act, 1903)	411, 472, 521, 549, 581, 590, 607
	s. 3	428, 429, 436, 437, 438, 445, 459, 589
	s. 4	322
	s. 5	472, 483
	s. 6 (1)	420
	(2)	420
	s. 7	617
	s. 8	621
c. 45.	(Employment of Children Act, 1903), ss. 1, 2	338
4 Edw. 7, c. 15.	(Prevention of Cruelty to Children Act, 1904), s. 2 (ii.)	338
c. 23.	(Licensing Act, 1904)—	
	s. 2 (3)	662
	s. 6	662
c. 31.	(Shop Hours Act, 1904)	338
6 Edw. 7, c. 14.	(Alkali etc. Works Regulation Act, 1906)	631
	s. 1	632
	s. 2	632
	s. 3	632
	s. 4	632
	s. 6	632
	s. 7	632
	s. 9	632
	s. 12	632
	(4)	632
	s. 15 (3)	632
	s. 17 (1)	632
	(2)	632
	(3)	632

		PAGE
6 Edw. 7, c. 14.	(Alkali etc. Works Regulation Act, 1906)—	
	s. 17 (4)	632
	(5)	632
	(6)	632, 633
	s. 21	632
c. 16.	(Justices of the Peace Act, 1906)	415
c. 25.	(Open Spaces Act, 1906)	672
	s. 4	672
	(1)	672
	(2)	672
c. 36.	(Musical Copyright Act, 1906)	170, 180, 181
	s. 1 (1)	170, 171
	(2)	171
	(3)	171
	(4)	171
	s. 3	170
c. 53.	(Notice of Accidents Act, 1906), s. 2	245
c. 55.	(Public Trustee Act, 1906)	679, 373
	s. 1	88
	(2)	305
	s. 2	679
	(5)	373
	s. 3	679
	(2) (b)	89
	s. 4	679
	s. 5	679
	s. 6	357, 679
	s. 10	679
	s. 13	679
	(6)	679
	s. 14	341
	s. 15	679
c. 58.	(Workmen's Compensation Act, 1906)	624
7 Edw. 7, c. 13.	(Finance Act, 1907), s. 19	377
8 Edw. 7, c. 28.	(Agricultural Holdings Act, 1908)	625, 633
	s. 13 (3)	625
	s. 14	626
	s. 30	630
	(1)	626
	s. 32	626
	s. 33	626
	s. 44	631
	s. 45	627, 628, 629, 630, 631
	s. 48	626
	s. 49	626
	Sched. II.	625, 631
c. 32.	(Friendly Societies Act, 1908), s. 6	651
c. 48.	(Post Office Act, 1908)—	
	s. 45	305
	s. 46	305
	s. 47	305
c. 67.	(Children Act, 1908)—	
	s. 1	243
	s. 6	243
	s. 9	243
c. 69	(Companies (Consolidation) Act, 1908).	320
	s. 3 (i.), (ii.)	307
	s. 8	307, 308
	s. 19	370
	s. 62	395
	s. 63 (3)	309
	s. 76	382
	s. 77	382
	s. 116	471
	s. 122	637
	s. 274	471
	(1), (2)	395

TABLE OF CASES.

A.

PAGE

ABERGAVENNY (LORD) *v.* Thomas (1739), 3 Anst. 668, n. 76
Abernethy *v.* Hutchinson (1825), 1 H. & Tw. 28 ; 3 L. J. (O. S.) (CH.) 209 . 152
Aberystwith (Promenade) Pier Co. *v.* Cooper (1866), 35 L. J. (Q. B.) 44 ; 12 Jur. (N. S.) 995 ; 13 L. T. 273 ; 14 W. R. 28 450
Abington *v.* Lipscomb (1841), 1 Q. B. 776 ; 1 Gal. & Dav. 230 ; 10 L. J. (Q.B.) 330 ; 6 Jur. 257 44
Abrath *v.* North Eastern Rail. Co. (1886), 11 App. Cas. 247 ; 50 J. P. 659 ; 55 L. J. (Q. B.) 457 ; 55 L. T. 63 387
Ackroyd *v.* Gill (1856), 5 E. & B. 808 ; 25 L. J. (Q. B.) 111 ; 2 Jur. (N. S.) 184 ; 4 W. R. 204 423
Acland *v.* Lewis (1860), 9 C. B. (N. S.) 32 ; K. & G. 334 ; 30 L. J. (C. P.) 29 ; 7 Jur. (N. S.) 21 ; 3 L. T. 472 ; 9 W. R. 123 302, 374
Adair's Settled Estates, *Re* (1873), L. R. 16 Eq. 124 ; 42 L. J. (CH.) 841 . . 130
Adams *v.* Batley (1887), 18 Q. B. D. 625 ; 56 L. J. (Q. B.) 393 ; 56 L. T. 770 ; 35 W. R. 437, C. A. 185, 186
——— *v.* Great Western Rail Co. (1861), 6 H. & N. 404 ; 30 L. J. (EX.) 124 ; 3 L. T. 631 ; 9 W. R. 254 450
Adderley *v.* Hart (1718), 1 Bos. & P. 394, n. 44
Addington *v.* Clode (1775), 2 Wm. Bl. 989 16
Adkin *v.* Friend (1878), 38 L. T. 393 460
Adley *v.* Reeves (1813), 2 Moo. & S. 53 340
——— *v.* Whitstable Co. (1809), 17 Ves. 315 337
Agar *v.* Athenæum Life Assurance Co. (1857), 3 C. B. (N. S.) 725 ; 27 L. J. (C. P.) 95 ; 4 Jur. (N. S.) 211 ; 6 W. R. 277 361
Ager *v.* Peninsular and Oriental Steam Navigation Co. (1884), 26 Ch. D. 637 ; 53 L. J. (CH.) 589 ; 50 L. T. 477 ; 33 W. R. 116 146, 164
——— *v.* Collingridge (1886), 2 T. L. R. 291 145
Agg-Gardner, *Re* (1884), 25 Ch. D. 600 ; 53 L. J. (CH.) 347 ; 49 L. T. 804 ; 32 W. R. 356 17, 130
Agra and Masterman's Bank *v.* Leighton (1866), L. R. 2 Exch. 56 ; 4 H. & C. 656 ; 36 L. J. (EX.) 33 489
Ailner's Case (1664), 1 Keb. 691 25
Albert (Prince) *v.* Strange (1849), 2 De G. & Sm. 652 ; 1 Mac. & G. 25 ; 1 H. & Tw. 1 ; 18 L. J. (CH.) 120 ; 13 Jur. 109 136, 137, 139, 188
Alexander *v.* Automatic Telephone Co., [1900] 2 Ch. 56 ; 69 L. J. (CH.) 428 ; 82 L. T. 400 ; 16 T. L. R. 339 ; 48 W. R. 546, C. A. 394
——— *v.* Jones (1866), L. R. 1 Exch. 133 ; 4 H. & C. 204 ; 35 L. J. (EX.) 78 ; 12 Jur. (N. S.) 125 ; 13 L. T. 719 ; 14 W. R. 400 449
——— *v.* Simpson (1889), 43 Ch. D. 139 ; 59 L. J. (CH.) 137 ; 61 L. T. 708 ; 38 W. R. 161 ; 1 Meg. 457, C. A. 343
Alexandra Palace Co., *Re* (1880), 16 Ch. D. 58 ; 50 L. J. (CH.) 7 ; 43 L. T. 406 ; 29 W. R. 70 395
Allen *v.* Abraham (1612), 2 Bulst. 32 31
——— *v.* Aldridge (1843), 5 Beav. 401 ; 13 L. J. (CH.) 155 ; 8 Jur. 435 . . . 63
——— *v.* Bewsey (1877), 7 Ch. D. 453 ; 37 L. T. 688, C. A. 74
——— *v.* Gold Reefs of West Africa, Ltd., [1901] 1 Ch. 656 ; 69 L. J. (CH.) 266 ; 82 L. T. 210 ; 16 T. L. R. 213 ; 48 W. R. 452, C. A. 323, 342
——— *v.* London and South Western Rail. Co. (1870), L. R. 6 Q. B. 65 ; 40 L. J. (Q. B.) 55 ; 23 L. T. 612 ; 19 W. R. 127 ; 11 Cox, C. C. 621 . 387
——— *v.* Sea Fire and Life Assurance Co. (1850), 9 C. B. 574 ; 19 L. J. (C. P.) 305 ; 14 Jur. 869, n. 362

PAGE
Alne Holme (The), [1893] P. 173 ; 62 L. J. (ADM.) 51 ; 1 R. 607 ; 68 L. T. 862 ; 41 W. R. 572 ; 7 Asp. M. L. C. 344 606
Ames *v.* Higden (1893), 69 L. T. 292 428
Amos *v.* Hughes (1835), 1 Mood. & R. 464 532
Anderson *v.* Gorrie, [1895] 1 Q. B. 668 ; 14 R. 79 ; 71 L. T. 382, C. A. . . . 415
Andrew *v.* Grove, [1902] 1 K. B. 625 ; 71 L. J. (K. B.) 439 ; 86 L. T. 720 ; 18 T. L. R. 455 ; 50 W. R. 524 579
Andrews *v.* Hulse (1858), 4 K. & J. 392 ; 4 Jur. (N. S.) 581 : 31 L. T. (O. S.) 193 ; 6 W. R. 508 70
——— *v.* Sharp (1773), 2 Wm. Bl. 911 248, 249
Anglesey (Marquis) *v.* Hatherton (Lord) (1842), 10 M. & W. 218 ; 12 L. J. (EX.) 57 10
Annesley, *Ex parte* (1836), 2 Y. & C. (EX.) 350 ; 6 L. J. (EX. EQ.) 81 309
——— *Ex parte, Re* Stratford Bridge Improvement Act. *See* Stratford Bridge Improvement Act, *Re, Ex parte* Annesley.
Anon. (1472), Jenk., case 68 382
——— (1552), 1 Dyer, 69 a ; Staundf. P. C. 96 274. 284
——— (1560), Cary, 18 12
——— (1573), 3 Dyer, 323 a 370
——— (1583), Cro. Eliz. 21 112
——— (1626), Lat. 166 270
——— (1673), 1 Vent. 239 ; 1 East, P. C. 389 280
——— (1680), 1 Vent. 352 285
——— (1691), 2 Freem. (CH.) 118 76. 92
——— (1696), 12 Mod. Rep. 112 284
——— (1700), 12 Mod. Rep. 423 ; 1 Salk. 191 310, 382
——— (1702), 7 Mod. Rep. 10 240
——— (1702), 1 Salk. 405 265
——— (1703), 6 Mod. Rep. 37 249
——— (1722), 1 Stra. 533 263, 287
——— (1728), 1 Barn. (K. B.) 137 322
——— (1731), 2 Barn. (K. B.) 74 346
——— (1755), 2 Ves. Sen. 621 16
——— (1773), Lofft, 315 350
——— (1774), Lofft, 556 321
——— (1824), 2 L. J. (O. S.) (K. B.) 93 106
——— [1876] W. N. 12 434
Anthony *v.* Seger (1789), 1 Hag. Con. 9 348, 349, 353
Apollinaris Co. *v.* Wilson (1886), 31 Ch. D. 632 ; 55 L. J. (CH.) 665 ; 54 L. T. 478 ; 34 W. R. 537, C. A. 600
Apothecaries Co. *v.* Burt (1850), 5 Exch. 363 ; 1 L. M. & P. 405 ; 19 L. J. (EX.) 334 ; 14 Jur. 487 428
Apothecaries Society, *Ex parte* (1890), 38 W. R. 478 606
Apthorpe *v.* Schoenhofen (Peter) Brewing Co., Ltd. (1899), 80 L. T. 395 ; 15 T. L. R. 245, C. A. 312
Archbold *v.* Sweet (1832), 5 C. & P. 219 ; 1 Mood. & R. 62 159
Arden *v.* Wilson (1872), L. R. 7 C. P. 535 ; 41 L. J. (C. P.) 273 ; 26 L. T. 887 . 124
Aris *v.* Orchard (1860), 30 L. J. (EX.) 21 ; 6 H. & N. 163 ; 3 L. T. 443 ; 9 W. R. 106 451
Arlett *v.* Ellis (1827), 7 B. & C. 346 ; 9 Dow. & Ry. (K. B.) ; 897 ; 9 B. & C. 671 ; 5 L. J. (O. S.) (K. B.) 391 11
Arlidge *v.* Islington Corporation, [1909] 2 K. B. 127 ; 78 L. J. (K. B.) 553 . 337
Armory *v.* Delamirie (1721), 1 Stra. 505 ; 1 Smith, L. C., 11th ed., 356 . . 247
Arnat *v.* Porter (1861), 30 L. J. (EX.) 19 451
Arnold *v.* Gravesend Corporation (1856), 25 L. J. (CH.) 530 ; 2 Jur. (N. S.) 703 ; 4 W. R. 478 396
——— *v.* Poole Corporation (1842), 4 Man. & G. 860 ; 5 Scott (N. R.), 741 ; 2 Dowl. (N. S.) 574 ; 12 L. J. (C. P.) 97 ; 7 Jur. 653 . . 381, 382, 395, 396, 397
Arnot *v.* United African Lands, Ltd., [1901] 1 Ch. 518 ; 70 L. J. (CH.) 306 ; 84 L. T. 300 ; 17 T. L. R. 245 ; 49 W. R. 322 ; 8 Mans. 179, C. A. . . . 347
Arundel's Case (1615), Hob. 64 ; 1 Roll. Abr. 515 305, 371
Ashbury Railway Carriage and Iron Co. *v.* Riche (1875), L. R. 7 H. L. 653 ; 44 L. J. (EX.) 185 ; 33 L. T. 451 ; 24 W. R. 794 359, 379
Ashmead *v.* Ranger (1700), 1 Ld. Raym. 551 ; 2 Salk. 638 ; 12 Mod. Rep. 378 ; Holt (K. B.), 162 ; Fortes. Rep. 152 ; Com. 71 48
Askew's (Dr.) Case (1768), 4 Burr. 2186 316, 323, 350
Aspden *v.* Seddon (1876), 1 Ex. D. 496 ; 46 L. J. (EX.) 353 ; 36 L. T. 45 ; 25 W. R. 277, C. A. 22, 23

PAGE
Aspey *v.* Jones (1884), 54 L. J. (Q. B.) 98; 33 W. R. 217, C. A. 426
Aston Tube Works, Ltd. *v.* Dumbell, [1904] 1 K. B. 535; 73 L. J. (K. B.) 208; 90 L. T. 315; 20 T. L. R. 165; 52 W. R. 444 588
Atcherley *v.* Vernon (1723), 10 Mod. Rep. 518 158
Atkins *v.* Kilby (1840), 11 Ad. & El. 777; 4 Per. & Dav. 145; 9 L. J. (M. C.) 52 427
Atkinson *v.* Carlisle Corporation, [1896] 1 Q. B. 393; 65 L. J. (Q. B.) 331 . . 595
——— *v.* Newcastle and Gateshead Waterworks Co. (1877), 2 Ex. D. 441; 46 L. J. (EX.) 775; 36 L. T. 761; 25 W. R. 794, C. A. 390
Attenborough *v.* Henschel, [1895] 1 Q. B. 833: 59 J. P. 150; 64 L. J. (Q. B.) 255; 15 R. 294; 72 L. T. 192; 43 W. R. 283 560
A.-G. *v.* Alexander (1874), L. R. 10 Exch. 20; 44 L. J. (EX.) 3; 31 L. T. 694; 23 W. R. 255 312
—— *v.* Ayre (1720), Bunb. 68 7
—— *v.* Barker (1872), L. R. 7 Exch. 177; 41 L. J. (EX.) 57; 26 L. T. 34; 20 W. R. 509 24
—— *v.* ——— (1900), 83 L. T. 245; 16 T. L. R. 502 365
—— *v.* Belfast Corporation, [1898] 1 I. R. 200 334
—— *v.* Birmingham Corporation (1858), 4 K. & J. 528 389
—— *v.* Brecon Corporation (1878), 10 Ch. D. 204; 48 L. J. (CH.) 153; 40 L. T. 52; 27 W. R. 332 366
—— *v.* British Museum (Trustees), [1903] 2 Ch. 598; 72 L. J. (CH.) 743; 88 L. T. 858; 19 T. L. R. 555; 51 W. R. 582 247
—— *v.* Cashel Corporation (1842), 2 Con. & Law. 1; 3 Dr. & War. 294 . . 373
—— *v.* Chester Corporation (1849), 1 H. & Tw. 46 303, 309
—— *v.* Davy (1741), 2 Atk. 212; West *temp.* Hard. 121 345
—— *v.* De Winton, [1906] 2 Ch. 106; 75 L. J. (CH.) 612; 70 J. P. 368; 22 T. L. R. 446; 54 W. R. 499; 4 L. G. R. 549 363, 364
—— *v.* Drapers' Co. (1843), 6 Beav. 382 366, 373
—— *v.* Durham (Earl) (1882), 46 L. T. 16 365
—— *v.* East Retford Corporation (1838), 3 My. & Cr. 484; 8 L. J. (CH.) 49; 2 Jur. 1079 367, 386
—— *v.* Ewelme Hospital (1853); 17 Beav. 366; 22 L. J. (CH.) 846; 1 W. R. 523 7, 19, 20
—— *v.* Exeter Corporation (1822), 1 Jac. 443 366
—— *v.* Farnham (Town) (1669), Hard. 504. 308
—— *v.* Foundling Hospital Governors (1793), 2 Ves. 42; 5 Bro. C. C. 165 . 367
—— *v.* Galway Corporation (1829), Beat. 298 366
—— *v.* Garner, [1907] 2 K. B. 480; 71 J. P. 357; 76 L. J. (K. B.) 965; 97 L. T. 486; 5 L. G. R. 944; 23 T. L. R. 563 365
—— *v.* Gaskill (1882), 22 Ch. D. 537; 52 L. J. (CH.) 163; 47 L. T. 566; 31 W. R. 135 384
—— *v.* Gower (Lord) (1740), Barn. (CH.) 145; 9 Mod. Rep. 224 . 319, 366, 401
—— *v.* Great Eastern Rail. Co. (1880), 5 App. Cas. 473; 49 L. J. (CH.) 545; 42 L. T. 810; 28 W. R. 769. 358, 359
—— *v.* Great Northern Rail. Co., [1909] 1 Ch. 775, C. A. 359
—— *v.* Hanmer (1858), 27 L. J. (CH.) 837; 6 W. R. 804 24
—— *v.* Hastings Corporation (1903), 67 J. P. 165; 19 T. L. R. 9; 1 L. G. R. 41 360
—— *v.* Hotham (Lord) (1823), Turn. & R. 209 17
—— *v.* Leeds (Duke) (1833), 2 My. & K. 343 55, 56
—— *v.* Leicester Corporation (1844), 7 Beav. 176 387
—— *v.* Lewin (1837), 8 Sim. 366.; 1 Coop. 51; 6 L. J. (CH.) 204; 1 Jur. 234 66, 105
—— *v.* London County Council, [1902] A. C. 165; 66 J. P. 340; 71 L. J. (CH.) 268; 50 W. R. 497; 86 L. T. 161; 18 T. L. R. 298 364
—— *v.* London and North Western Rail. Co., [1900] 1 Q. B. 78; 63 J. P. 772; 69 L. J. (Q. B.) 26; 81 L. T. 649; 16 T. L. R. 30, C. A. 365
—— *v.* Manchester Corporation, [1906] 1 Ch. 643; 70 J. P. 201; 75 L. J. (CH.) 330; 22 T. L. R. 261; 4 L. G. R. 365; 54 W. R. 307 . . . 358, 364
—— *v.* Mathias (1858), 4 K. & J. 579; 27 L. J. (CH.) 761; 4 Jur. (N. S.) 628; 6 W. R. 780 7
—— *v.* Mersey Rail. Co., [1907] A. C. 415; 71 J. P. 448; 76 L. J. (CH.) 568; 97 L. T. 524; 23 T. L. R. 684 364
—— *v.* Middleton (1751), 2 Ves. Sen. 327 336
—— *v.* Moore, [1893] 1 Ch. 676; 68 L. T. 574; 3 R. 213; 41 W. R. 294 . . 247
—— *v.* Moorsom-Roberts (1908), 72 J. P. 123; 6 L. G. R. 470 4
—— *v.* Newbury Corporation (1834), 3 My. & K. 647; 6 L. J. (CH.) 64 . 302, 367
—— *v.* Newcastle Corporation (1842), 5 Beav. 307; (1845) 12 Cl. & Fin. 402. 315, 358
—— *v.* Newcomb (1807), 14 Ves. 1 318

PAGE

A.-G. *v.* North Metropolitan Tramways Co., [1892] 3 Ch. 70 ; 61 L. J. (CH.) 693 ; 67 L. T. 283 396
—— *v.* Parsons (1832), 2 Cr. & J. 279 ; 2 Tyrw. 223 ; 1 L. J. (EX.) 103 . . 5
—— *v.* Pontypridd Waterworks Co., [1908] 1 Ch. 388 ; 72 J. P. 48 ; 77 L. J. (CH.) 237 ; 98 L. T. 275 ; 24 T. L. R. 196 ; 6 L. G. R. 397 . . . 365
—— *v.* Power (1809), 1 Ball & B. 145 306
—— *v.* Rye Corporation (1817), 1 Moore (C. P.), 267 ; 7 Taunt. 546 . . . 308
—— *v.* St. John's Hospital, Bedford (1865), 2 De G. J. & Sm. 621 ; 34 L. J. (CH.) 441 ; 11 Jur. (N. S.) 629 ; 12 L. T. 714 ; 13 W. R. 955, C. A. . 366
—— *v.* Sandover, [1904] 1 K. B. 689 ; 73 L. J. (K. B.) 478 ; 90 L. T. 480 ; 20 T. L. R. 351 ; 52 W. R. 573 27, 31, 32
—— *v.* Scott, [1905] 2 K. B. 160 ; 74 L. J. (K. B.) 803 ; 69 J. P. 109 ; 93 L. T. 249 ; 21 T. L. R. 211 ; 3 L. G. R. 272, C. A. 365
—— *v.* Shrewsbury Bridge Co. (1880), 42 L. T. 79 364
—— *v.* Sitwell (1835), 1 Y. & C. (EX.) 559 ; 5 L. J. (EX. EQ.) 86 . . . 19
—— *v.* Smith (George C.), Ltd. (1909), 25 T. L. R. 257 358
—— *v.* Walthamstow Urban District Council (1895), 11 T. L. R. 533 . . 396
—— *v.* West Gloucestershire Water Co., [1909] 1 Ch. 636 364
—— *v.* Wilkinson (1860), 29 L. J. (CH.) 41 396
—— *v.* Wimbledon House Estate Co., Ltd., [1904] 2 Ch. 34 ; 68 J. P. 341 ; 73 L. J. (CH.) 593 ; 91 L. T. 163 ; 20 T. L. R. 489 ; 2 L. G. R. 826 . 364
—— for Ireland *v.* Vandeleur, [1907] A. C. 369 ; 76 L. J. (P. C.) 89 ; 97 L. T. 221 4
Attree *v.* Scutt (1805), 6 East, 476 ; 2 Smith, L. C., 11th ed., 449 . . . 43
Atwool *v.* Merryweather (1867), L. R. 5 Eq. 464, n. ; 37 L. J. (CH.) 35 . . 394
Austen *v.* Bennett (1693), 1 Salk. 356 ; 3 Salk. 333 ; 2 Saund. 168, n. . . 38
Austin *v.* Bethnal Green Guardians (1874), L. R. 9 C. P. 91 ; 43 L. J. (C. P.) 100 ; 29 L. T. 807 ; 22 W. R. 406 381
—— *v.* Mills (1853), 9 Exch. 288 ; 2 C. L. R. 411 ; 23 L. J. (EX.) 40 ; 18 Jur. 16 ; 2 W. R. 107 534
Australian Auxiliary Steam Clipper Co., Ltd. *v.* Mounsey (1858), 4 K. & J. 733 ; 27 L. J. (CH.) 729 ; 4 Jur. (N. S.) 1224 ; 6 W. R. 734 363
Australian Royal Mail Co. *v.* Marzetti (1855), 11 Exch. 228 ; 3 C. L. R. 1179 ; 24 L. J. (EX.) 273 383
Austria (Emperor) *v.* Day and Kossuth (1861), 30 L. J. (CH.) 690 ; 4 L. T. 494 ; 7 Jur. (N. S.) 483 ; 9 W. R. 712, C. A. 191
Avanzo *v.* Mudie (1854), 10 Exch. 203 202
Avards *v.* Rhodes (1853), 8 Exch. 312 ; 22 L. J. (EX.) 106 ; 17 Jur. 71 . . 429
Avery *v.* Wood, [1891] 3 Ch. 115 ; 65 L. T. 122 ; 39 W. R. 577, C. A. . . 205
Ayers *v.* South Australian Banking Co. (1871), L. R. 3 P. C. 548 ; 7 Moo. P. C. C. (N. S.) 432 ; 40 L. J. (P. C.) 22 ; 19 W. R. 860 363
Aykroyd, *Re*, Grimbley *v.* Aykroyd (1847), 1 Exch. 479 ; 3 Dow. & L. 701 ; 17 L. J. (EX.) 157 ; 12 Jur. 357 459, 612
Ayr Harbour Trustees *v.* Oswald (1883), 8 App. Cas. 623 360
Ayray's (Dr.) Case (1614), 11 Co. Rep. 18 b 308

B.

BACH *v.* Longman (1777), 2 Cowp. 623 137
Badcock *v.* Hunt (1889), 38 W. R. 255 582
Baddeley, *Re*, Baddeley *v.* Denton (1849), 4 Exch. 508 ; 7 Dow. & L. 210 ; 19 L. J. (EX.) 44 431
Badger *v.* Ford (1819), 3 B. & Ald. 153 50, 58, 84
Bagg's Case (1616), 11 Co. Rep. 93 b 324, 325
Bagshaw *v.* Eastern Union Rail. Co. (1849), 7 Hare, 114 ; 6 Ry. & Can. Cas. 152 ; 18 L. J. (CH.) 193 ; 13 Jur. 602 360, 365, 394
Bagshawe *v.* Goward (1607), Cro. Jac. 147 ; Noy, 119 ; Yelv. 96 6
Bailey *v.* Bryant (1858), 1 E. & E. 340 ; 28 L. J. (Q. B.) 86 ; 5 Jur. (N. S.) 468 . 449
—— *v.* Taylor (1824), 3 L. J. (O. S.) (CH.) 66 145, 164
Baily *v.* Taylor (1829), 8 L. J. (O. S.) (CH.) 49 ; 1 Russ. & M. 73 ; Taml. 295 . 166
Baker *v.* White (1875), L. R. 20 Eq. 166 ; 44 L. J. (CH.) 651 ; 33 L. T. 347 ; 23 W. R. 670 91
Balfour *v.* Ernest (1859), 5 C. B. (N. S.) 601 ; 28 L. J. (C. P.) 170 ; 5 Jur. (N. S.) 439 ; 7 W. R. 207 361
Ball *v.* Kemp-Welch (1880), 14 Ch. D. 512 ; 49 L. J. (CH.) 528 ; 43 L. T. 116 . 676
Ballyragget, *Re* (1883), 17 I. L. T. 34 285
Banbury Corporation Case (1716), 10 Mod. Rep. 346 399

PAGE
Banca Nazionale sede di Torino *v.* Hamburger (1863), 2 H. & C. 330; 8 L. T. 548; 11 W. R. 1074 393
Bank of Bombay *v.* Suliman Somji (1908), L. R. 35 Ind. App. 130; 99 L. T. 62; 24 T. L. R. 698 324
Bank of England, *Ex parte*, *Re* Stephens. *See* Stephens, *Re*, *Ex parte* Bank of England.
Bank of Ireland (Governor and Company) *v.* Evans' Charities in Ireland (Trustees) (1855), 5 H. L. Cas. 389; 3 W. R. 573 356
Bank of New South Wales *v.* Owston (1879), 4 App. Cas. 270; 48 L. J. (P. C.) 25; 40 L. T. 500 387, 388
Bank of Syria, *Re*, Owen and Ashworth's Claim, [1900] 2 Ch. 272; 69 L. J. (CH.) 412; 83 L. T. 165; affirmed [1901] 1 Ch. 115; 70 L. J. (CH.) 82; 83 L. T. 547; 17 T. L. R. 84; 49 W. R. 100; 8 Mans. 105, C. A. 363
Banks *v.* Hollingsworth, [1893] 1 Q. B. 442; 57 J. P. 436; 68 L. T. 477; 62 L. J. (Q. B.) 239; 4 R. 228; 41 W. R. 225, C. A. 611
——— *v.* Rebbeck (1851), 20 L. J. (Q. B.) 476; 2 L. M. & P. 453; 15 Jur. 657 . 437
Banque d' Hochelaga *v.* Murray (1890), 15 App. Cas. 414; 59 L. J. (P. C.) 102; 63 L. T. 63 400
Barber *v.* Boulton (1719), 1 Stra. 314 352
——— *v.* Burt, [1894] 2 Q. B. 437; 63 L. J. (Q. B.) 700; 10 R. 397; 71 L. T. 295; 42 W. R. 572 608
Barbrooke *v.* Moore (1889), 88 L. T. Jo. 155 591
Barclee's (or Barkley's) Case (1658), 2 Sid. 90; 2 Hale, P. C. 60 . 212, 258, 259, 265, 279, 280
Barfield *v.* Nicholson (1824), 2 Sim. & St. 1; 2 L. J. (O. S.) (CH.) 90 . . . 143
Baring *v.* Abingdon, [1892] 2 Ch. 374; 62 L. J. (CH.) 105; 67 L. T. 6; 41 W. R. 22, C. A. 112
Barker *v.* Hempstead (1889), 23 Q. B. D. 8; 58 L. J. (Q. B.) 369; 60 L. T. 640; 37 W. R. 685 587
——— *v.* Palmer (1881), 8 Q. B. D. 9; 45 L. T. 480; 30 W. R. 59 . . . 604
Barnard *v.* Pillow, [1868] W. N. 94 165
Barned's Banking Co., *Re*, *Ex parte* Contract Corporation (1867), 3 Ch. App. 105; 37 L. J. (CH.) 81; 17 L. T. 269; 16 W. R. 193 . . . 310 311, 322
Barnes, *Ex parte* (1842), 2 Dowl. (N. S.) 20; 7 Jur. 217 16
——— *v.* Corke (1691), 3 Lev. 309 33, 34, 49, 99
——— *v.* Marshall (1852), 18 Q. B. 785; 21 L. J. (Q. B.) 388; 16 Jur. 1086 . 452
——— *v.* Mawson (1813), 1 M. & S. 77. 22
Barnett *v.* Glossop (1835), 1 Bing. (N. C.) 633; 1 Scott, 621; 1 Hodg. 94; 4 L. J. (C. P.) 174 168
——— *v.* Guildford (1854), 11 Exch. 19; 24 L. J. (EX.) 281; 1 Jur. (N. S.) 1142; 3 W. R. 406 88
Barrow *v.* Barrow (1855), 3 W. R. 587 28
Barry *v.* Stevens (1862), 31 Beav. 258; 31 L. J. (CH.) 785; 9 Jur. (N. S.) 143; 6 L. T. 568; 10 W. R. 822 162, 165
Bartlett *v.* Downes (1825), 3 B. & C. 616; 5 Dow. & Ry. (K. B.) 526; 1 C. & P. 522; 3 L. J. (O. S.) (K. B.) 90 60
Barton *v.* Titmarsh (1880), 49 L. J. (Q. B.) 573; 49 L. T. 610; 28 W. R. 821, C. A. 548
Barwick *v.* English Joint Stock Bank (1867), L. R. 2 Exch. 259; 36 L. J. (EX.) 147; 16 L. T. 461; 15 W. R. 877 387, 388
Baschet *v.* London Illustrated Standard Co., [1900] 1 Ch. 73; 69 L. J. (CH.) 35; 81 L. T. 509; 48 W. R. 56 140, 142, 144, 166, 190, 191, 201
Basingstoke Corporation *v.* Bolton (Lord) (1852), 1 Drew. 270; 22 L. J. (CH.) 305; 17 Jur. 57; 1 W. R. 76 . 38, 42, 45
——— *v.* ——— (1854), 3 Drew. 50; 3 W. R. 142...38, 59
Baskett *v.* Cambridge University (1758), 1 Wm. Bl. 105; 2 Burr. 661; 2 Keny. 397 173
Baspool *v.* Long (1602), Cro. Eliz. 879; Yelv. 1; 1 Roll. Abr. 568 9
Bassano *v.* Bradley, [1896] 1 Q. B. 645; 65 L. J. (Q. B.) 479; 74 L. T. 553; 44 W. R. 576 438
Bassett *v.* Tong, [1894] 2 Q. B. 332; 63 L. J. (Q. B.) 653; 71 L. T. 16; 42 W. R. 668; 10 R. 212. 439
Bastow, *Ex parte* (1854), 14 C. B. 631 156
Bateman *v.* Ashton-under-Lyne Corporation (1858), 3 H. & N. 323; 27 L. J. (EX.) 458; 6 W. R. 829 358, 359, 379
——— *v.* Mid Wales Rail. Co. (1866), L. R. 1 C. P. 499; 1 Har. & Ruth. 508; 38 L. J. (C. P.) 205; 12 Jur. (N. S.) 453; 14 W. R. 672 361, 362

PAGE
Bateman *v.* Poplar District Board of Works (No. 2) (1887), 37 Ch. D. 272; 57 L. J. (CH.) 579; 58 L. T. 720; 36 W. R. 501 390
Bates *v.* Burchell, [1884] W. N. 108 591
Bateson *v.* Green (1793), 5 Term Rep. 411 9
Bath (Earl) *v.* Abney (1757), 1 Burr. 206; 1 Keny. 471; Dick. 263 . 27, 76, 105
Bathurst Borough *v.* Macpherson (1879), 4 App. Cas. 256; 48 L. J. (P. C.) 61; 41 L. T. 778 387
Batmore *v.* Graves (1674), 1 Vent. 260; 2 Lev. 107; 1 Mod. Rep. 102; 3 Keb. 263 34
Batt *v.* Price (1876), 1 Q. B. D. 264; 45 L. J. (Q. B.) 170; 33 L. T. 808; 24 W. R. 318 610, 618
Batten-Pooll *v.* Kennedy, [1907] 1 Ch. 256; 76 L. J. (CH.) 162 22
Bawtree *v.* Great North Western Central Rail. Co. (1898), 14 T. L. R. 448, C. A. 393
Baxter *v.* Brown (1845), 7 Man. & G. 198; 8 Scott (N. R.), 1019 374
——— *v.* London County Council (1890), 55 J. P. 391; 63 L. T. 767 . . . 223
——— *v.* Mann (1838), cited in Cooch *v.* Goodman (1842), 2 Q. B. 580 . . 309
Bayley *v.* Manchester, Sheffield, and Lincolnshire Rail. Co. (1873), L. R. 8 C. P. 148; 42 L. J. (C. P.) 78; 28 L. T. 366 388
Beal, *Ex parte* (1868), L. R. 3 Q. B. 387; 9 B. & S. 395; 37 L. J. (Q. B.) 161; 18 L. T. 285; 16 W. R. 852 170, 195, 196, 199
Beard *v.* Knight (1858), 8 E. & B. 865; 27 L. J. (Q. B.) 359; 4 Jur. (N. S.) 782; 6 W. R. 226 564
"Bearn, The," [1906] P. 48; 75 L. J. (P.) 9; 94 L. T. 265; 22 T. L. R. 165; 10 Asp. M. L. C. 208, C. A. 390
Beaufort (Duke) *v.* Smith (1849), 4 Exch. 450; 19 L. J. (EX.) 97 . . 10, 18
——— *v.* Swansea Corporation (1849), 3 Exch. 413 4, 18
Beaumont *v.* Meredith (1814), 3 Ves. & B. 180 303
Bechuanaland Exploration Co. *v.* London Trading Bank, [1898] 2 Q. B. 658; 3 Com. Cas. 285; 67 L. J. (Q. B.) 986; 79 L. T. 270; 14 T. L. R. 587 . . 362
Bede Steamship Co. *v.* River Wear Commissioners, [1907] 1 K. B. 310; 76 L. J. (K. B.) 434; 96 L. T. 370; 10 Asp. M. L. C. 370, C. A. 389
Beere *v.* Ellis (1889), 5 T. L. R. 330 183
Beighton *v.* Beighton (1895), 64 L. J. (CH.) 796; 73 L. T. 86; 13 R. 743; 43 W. R. 685 58
Belfield *v.* Adams (1616), 3 Bulst. 80; 1 Roll. Rep. 256 13
Bell *v.* Walker (1785), 1 Bro. C. C. 451 146
—— *v.* Whitehead (1839), 8 L. J. (CH.) 141; 3 Jur. 68 147, 164
Bellamy *v.* Hoyle (1875), L. R. 10 Exch. 220; 44 L. J. (EX.) 169; 33 L. T. 21; 23 W. R. 754 421
Bence *v.* Gilpin (1868), L. R. 3 Exch. 76; 37 L. J. (EX.) 36; 17 L. T. 655; 16 W. R. 705 35, 107
Benger *v.* Drew (1721), 1 P. Wms. 781; 2 Eq. Cas. Abr. 739 74
Bennett *v.* Drake (1907), 23 T. L. R. 533 493, 587
——— *v.* Hartford (Hundred) (1650), Sty. 233 265
Benson *v.* Strode (1681), 2 Show. 150; Poll. 615; T. Jo. 189; Skin. 8; affirmed *sub nom.* Strode *v.* Dennison (1682), 3 Lev. 94 50
Bentham *v.* Hoyle (1878), 3 Q. B. D. 289; 47 L. J. (M. C.) 51; 37 L. T. 753; 26 W. R. 314 336, 338
Bentley *v.* Ely (Bishop) (1726), Fortes. Rep. 298 302, 334
Beresford-Hope *v.* Sandhurst (Lady) (1889), 23 Q. B. D. 79; 53 J. P. 805; 58 L. J. (Q. B.) 316; 61 L. T. 150; 37 W. R. 548, C. A. 322
Berkeley *v.* Elderkin (1853), 22 L. J. (Q. B.) 281; 1 E. & B. 805; 17 Jur. 1153; 1 W. R. 305 534
——— *v.* Standard Discount Co. (1879), 13 Ch. D. 97; 49 L. J. (CH.) 1; 41 L. T. 388; 28 W. R. 125, C. A. 396
Berry *v.* Greene (1594), Cro. Eliz. 349 93
Berwick-upon-Tweed Corporation *v.* Johnson (1773), Lofft, 334 . . . 318
Best, *Ex parte* (1833), 3 Dowl. 38 16
Beswick *v.* Capper (1849), 7 C. B. 669; 18 L. J. (C. P.) 216, n. 429
Betts *v.* De Vitre (1868), 3 Ch. App. 441; 37 L. J. (CH.) 325; 18 L. T. 165; 16 W. R. 529 387
Beverley *v.* Lincoln Gas Light and Coke Co. (1837), 2 Nev. & P. (Q. B.) 283; 6 Ad. & El. 829; Will. Woll. & Dav. 519; 7 L. J. (Q. B.) 113 383
Bickley *v.* Bickley (1867), L. R. 4 Eq. 216; 36 L. J. (CH.) 817 87
Biggerstaff *v.* Rowatt's Wharf, Ltd., [1896] 2 Ch. 93; 65 L. J. (CH.) 536; 74 L. T. 473; 44 W. R. 536, C. A. 361
Bill *v.* Darenth Vale Rail. Co. (1856), 1 H. & N. 305; 26 L. J. (EX.) 81; 2 Jur. (N. S.) 595; 4 W. R. 684 361

PAGE
Bingham *v.* Woodgate (1829), 4 Russ. & M. 32 ; Taml. 183 ; 8 L. J. (O. S.) (CH.) 46 ; (1831) 1 Russ. & M. 750 21, 67, 111
Birks *v.* Silverwood (1871), L. R. 14 Eq. 101 ; 41 L. J. (CH.) 638 ; 27 L. T. 18 . 446
Birmingham Banking Co., *Ex parte*, *Re* Patent File Co. *See* Patent File Co., *Re*, *Ex parte* Birmingham Banking Co.
Birstall Candle Co. *v.* Daniels, [1908] 2 K. B. 254 ; 77 L. J. (K. B.) 590 ; 99 L. T. 109 ; 24 T. L. R. 572 ; 52 Sol. Jo. 458 558, 567
Bishop *v.* Balkis Consolidated Co. (1890), 25 Q. B. D. 77 ; affirmed (1890) 25 Q. B. D. 512 ; 63 L. T. 601 ; 39 W. R. 99, C. A. 387
——— *v.* Viviana Co. (1908), *Times*, January 15, 1909 183, 184
Black *v.* Christchurch Finance Co., [1894] A. C. 48 ; 58 J. P. 332 ; 63 L. J. (P. C.) 32 ; 6 R. 394 ; 70 L. T. 77 390
——— *v.* Imperial Book Co. (1903), 5 Ontario L. R. 184 156
Blackburn *v.* Jepson (1818), 3 Swan. 132 392
——————— Corporation *v.* Sanderson, [1902] 1 K. B. 794 ; 66 J. P. 452 ; 71 L. J. (K. B.) 590 ; 86 L. T. 304 ; 18 T. L. R. 436, C. A 677
Blackburne *v.* Graves (1673), 1 Mod. Rep. 102 ; 1 Vent. 260 ; 2 Lev. 107 ; 3 Keb. 263, 329 29
Blackett *v.* Lowes (1814), 2 M. & S. 494 25
Blackmore *v.* White, [1899] 1 Q. B. 293 ; 68 L. J. (Q. B.) 180 ; 80 L. T. 79 ; 47 W. R. 448 48
Blackston *v.* Martin (1625), Lat. 112 372
Blackwell *v.* Harper (1740), 2 Atk. 93 201, 202
Blades *v.* Lawrence (1874), L. R. 9 Q. B. 374 ; 43 L. J. (Q. B.) 133 ; 30 L. T. 378 ; 22 W. R. 643 412, 440, 615
Blaker *v.* Wells (1873), 28 L. T. 21 64
Blakeway *v.* Patteshall, [1894] 1 Q. B. 247 608
Blanchett *v.* Ingram (1887), 3 T. L. R. 687 139
Bland *v.* Hiam (1873), *Times*, January 16, 1873 146
Blank *v.* Footman, Pretty & Co. (1888), 39 Ch. D. 678 ; 57 L. J. (CH.) 909 ; 59 L. T. 507 ; 36 W. R. 921 189
Blankley *v.* Winstanley (1789), 3 Term Rep. 279 318
Blemmerttasset *v.* Humberstone (1621), Hut. 65 85
Blenkarne *v.* Jennens (1708), 2 Bro. Parl. Cas. 278 94
Blewett *v.* Jenkins (1862), 12 C. B. (N. S.) 16 25
Bloxam *v.* Metropolitan Rail. Co. (1868), 3 Ch. App. 337 ; 18 L. T. 41 ; 16 W. R. 490 394
Blyth, *Ex parte*, Hood-Barrs *v.* Heriot. *See* Hood-Barrs *v.* Heriot, *Ex parte* Blyth.
——— *v.* Birmingham Waterworks Co. (1856), 11 Exch. 781 ; 25 L. J. (EX.) 212 ; 2 Jur. (N. S.) 333 ; 4 W. R. 294 389
——— and Young, *Re* (1879), 13 Ch. D. 416, C. A. 606
Bodwic *v.* Fennell (1748), 1 Wils. 233 339
Bogue *v.* Houlston (1852), 5 De G. & Sm. 267 ; 21 L. J. (CH.) 470 ; 16 Jur. 372 145, 155, 198, 206
Bohn *v.* Bogue (1846), 10 Jur. 420 147, 164
Bolton *v.* Aldin (1895), 65 L. J. (Q. B.) 120 196
——— *v.* London Exhibitions, Ltd., and Weiners, Ltd. (1898), 14 T. L. R. 550 194
Bonner *v.* Great Western Rail. Co. (1883), 24 Ch. D. 1 ; 47 J. P. 580 ; 48 L. T. 619 ; 32 W. R. 190, C. A. 372
Bonsey *v.* Wordsworth (1856), 18 C. B. 325 ; 25 L. J. (C. P.) 205 ; 2 Jur. (N. S.) 494 ; 4 W. R. 566 451, 459
Boosey *v.* Davidson (1846), 4 Dow. & L. 147 168
——— *v.* Fairlie (1877), 7 Ch. D. 301 ; 47 L. J. (CH.) 186 ; 38 L. T. 590 ; 26 W. R. 178, C. A. 187
——— *v.* Purday (1846), 10 Jur. 1038 168
——— *v.* Whight, [1900] 1 Ch. 122 ; 69 L. J. (CH.) 66 ; 81 L. T. 571 ; 16 T. L. R. 82 ; 48 W. R. 228, C. A. 143, 163, 170, 186
——— & Co. *v.* Whight & Co. (No. 2) (1899), 81 L. T. 265 167
Booth *v.* Arnold, [1895] 1 Q. B. 571 ; 64 L. J. (Q. B.) 443 ; 14 R. 326 ; 72 L. T. 310 ; 43 W. R. 360, C. A. 324, 330
Borthwick *v.* Evening Post (1888), 37 Ch. D. 449 ; 57 L. J. (CH.) 406 ; 58 L. T. 252 ; 36 W. R. 434, C. A. 144, 166
——————— *v.* Walton (1855), 15 C. B. 501 ; 3 C. L. R. 364 ; 24 L. J. (C. P.) 83 ; 1 Jur. (N. S.) 142 ; 3 W. R. 203 451
Bostock *v.* North Staffordshire Rail Co. (1855), 4 E. & B. 798 ; 3 C. L. R. 1027 ; 24 L. J. (Q. B.) 225 ; 1 Jur. (N. S.) 921 366, 372

PAGE
Boucas *v.* Cooke, [1903] 2 K. B. 227; 72 L. J. (K. B.) 741; 88 L. T. 760; 19 T. L. R. 475; 52 W. R. 99, C. A. 193, 194
Boucicault *v.* Chatterton (1876), 5 Ch. D. 267; 46 L. J. (CH.) 305; 35 L. T. 745; 25 W. R. 287, C. A. 139, 177
——— *v.* Delafield (1863), 33 L. J. (CH.) 38; 1 Hem. & M. 597; 9 Jur. (N. S.) 1282; 9 L. T. 709; 12 W. R. 101 139, 177
"Bourgogne, La." *See* Compagnie Générale Transatlantique *v.* Law (Thomas) & Co., "La Bourgogne."
Bourne *v.* Tayler (1808), 10 East, 189 23
Bournemouth Commissioners *v.* Watts (1884), 14 Q. B. D. 287; 49 J. P. 102; 54 L. J. (Q. B.) 93; 33 W. R. 280 381, 386
Bow *v.* Hart, [1905] 1 K. B. 592; 74 L. J. (K. B.) 341; 92 L. T. 181; 21 T. L. R. 251; 22 R. P. C. 222; 53 W. R. 372, C. A. 432
Bowen (Tamerlane), *Re* (1851), 15 Jur. 1196 613
——— *v.* Morris (1810), 2 Taunt. 374 329
Bower *v.* Griffith (1868), 16 W. R. 540 315
Bowie, *Re*, *Ex parte* Breull (1880, 16 Ch. D. 484; 50 L. J. (CH.) 384; 43 L. T. 580; 29 W. R. 299, C. A. 312, 450
Bowles *v.* Drake (1881), 8 Q. B. D. 325; 51 L. J. (Q. B.) 66; 45 L. T. 576; 30 W. R. 333, C. A. 440
——— *v.* Rump (1861), 9 W. R. 370 69
Bowser *v.* Maclean (1860), 2 De G. F. & J. 415; 30 L. J. (CH.) 273; 6 Jur. (N. S.) 1220; 3 L. T. 456; 9 W. R. 112 22, 24
Box *v.* Green (1854), 9 Exch. 503; 2 C. L. R. 528; 23 L. J. (EX.) 219 . 427, 610
Boyd *v.* Croydon Rail. Co. (1838) 4 Bing (N. C.) 669 358
——— *v.* Pawle (1866), 14 L. T. 753; 14 W. R. 1009 72
Brabant *v.* Wilson (1865), L. R. 1 Q. B. 44; 6 B. & S. 979; 35 L. J. (Q. B.) 49; 12 Jur. (N. S.) 24; 13 L. T. 319; 14 W. R. 28 124
Bradbury *v.* Beeton (1869), 39 L. J. (CH.) 57; 18 W. R. 33; 21 L. T. 323 . 144, 165
——— *v.* Hotten (1872), L. R. 8 Exch. 1; 42 L. J. (EX.) 28; 27 L. T. (N. S.) 450; 21 W. R. 126. 155, 164
——— *v.* Sharp, [1891] W. N. 143 153, 198
Bradford *v.* Brownjohn (1868), 3 Ch. App. 711; 38 L. J. (CH.) 10; 18 L. T. 388; 16 W. R. 1178 35, 76
Bradley, *Re*, Oldenshaw *v.* Governesses Benevolent Institution (1887), 3 T. L. R. 668 370
——— *v.* Carr (1841), 3 Scott (N. R.), 521; 3 Man. & G. 221 . . . 59, 60, 65
——— *v.* Munton (1852), 16 Beav. 294 96
Bradshaw *v.* Lawson (1791), 4 Term Rep. 443 11, 20, 46, 113
Bragg's Case (1587), Godb. 135; Owen, 4 12
Bramah v. Roberts (1837), 3 Bing. (N. C.) 963; 5 Scott, 172; 6 L. J. (C. P.) 346 362
Bramwell *v.* Halcomb (1836), 3 My. & Cr. 737 164
Braunche's (Sir John) Case (1587), 1 Leon. 104 13, 14
Breay *v.* Royal British Nurses' Association, [1897] 2 Ch. 272; 66 L. J. (CH.) 587; 76 L. T. 735; 46 W. R. 86, C. A. 366
Breeze *v.* Hawker (1844), 14 Sim. 350 17
Brend *v.* Brend (1676), Cas. *temp.* Finch. 254 95
Breull, *Ex parte*, *Re* Bowie. *See* Bowie, *Re*, *Ex parte* Breull.
Bridger *v.* Huett (1860), 2 F. & F. 35 17, 60, 62
Bridges *v.* Garrett (1870), L. R. 5 C. P. 451; 39 L. J. (C. P.) 251; 22 L. T. 448; 18 W. R. 815 30
Bright *v.* Forth (1595), Cro. Eliz. 442 20
Bright-Smith, *Re*, Bright-Smith *v.* Bright-Smith (1886), 31 Ch. D. 314; 55 L. J. (CH.) 365; 54 L. T. 47; 34 W. R. 252 109
Brighton Sewers Act, *Re* (1881), 9 Q. B. D. 723 615
Brisco *v.* Lomax (1838), 8 Ad. & El. 198; 3 Nev. & P. (Q. B.) 308; 1 Will. Woll. & H. 235; 7 L. J. (Q. B.) 148; 2 Jur. 682 19
Bristol Corporation *v.* Visger (1826), 8 Dow. & Ry. (K. B.) 434 324
Bristol's (Dean and Chapter) Case (1603), Cary, 44 308
Bristow *v.* Booth (1869), L. R. 5 C. P. 80; 39 L. J. (C. P.) 47; 21 L. T. 427; 18 W. R. 138 33
Britain *v.* Hanks Brothers & Co. (1902), 18 T. L. R. 525 189, 207
——— *v.* Kennedy (1902), 19 T. L. R. 122 208
British Cash and Parcel Conveyors, Ltd. *v.* Lamson Store Service Co., Ltd., [1908] 1 K. B. 1006; 77 L. J. (K. B.) 649; 98 L. T. 875, C. A. . . . 387
British Flax Producers Co., Ltd., *Re* (1889), 60 L. T. 215; 1 Meg. 133 . . 349
British Industry Life Assurance Co. *v.* Ward (1856), 17 C. B. 644 . . . 603

PAGE
British Sugar Refining Co., *Re*, Faris, *Ex parte* (1857), 26 L. J. (CH.) 369; 3 K. & J. 408; 5 W. R. 379 343
British Wagon Co. *v.* Gray, [1896] 1 Q. B. 35; 65 L. J. (Q. B.) 75; 73 L. T. 498; 44 W. R. 113, C. A. 395
Broad *v.* Perkins (1888), 21 Q. B. D. 533; 53 J. P. 39; 57 L. J. (Q. B.) 638; 60 L. T. 8; 37 W. R. 44, C. A. 614
Broadbent *v.* Wilkes (1744), Willes, 360 9
Brooke *v.* Chitty (1831), 2 Coop. *temp.* Cott. 216 158
——— *v.* Wentworth (1798), 3 Anst. 881 158
Brookman *v.* Wenham (1851), 2 L. M. & P. 233; 20 L. J. (Q. B.) 278; 15 Jur. 249 . 611
Brooks *v.* Cock (1835), 3 Ad. & El. 138; 4 Nev. & M. (K. B.) 652; 1 H. & W. 129; 4 L. J. (K. B.) 144 205
——— *v.* Religious Tract Society, [1897] W. N. 25 204
——— & Co. *v.* Blackburn and District Benefit Building Society (1884), 9 App. Cas. 857; 54 L. J. (CH.) 376; 52 L. T. 225; 33 W. R. 309 . 363
——— Jenkins & Co. *v.* Torquay Corporation, [1902] 1 K. B. 601; 66 J. P. 293; 71 L. J. (K. B.) 109; 85 L. T. 785; 18 T. L. R. 139 381, 386
Broster, *Re*, *Ex parte* Pruddah, [1897] 2 Q. B. 429; 66 L. J. (Q. B.) 766; 76 L. T. 692; 45 W. R. 576; 4 Mans. 212 564
Broughton *v.* Manchester Waterworks Co. (1819), 3 B. & Ald. 1; 22 R. R. 278 . 362
Brown *v.* Book (1892), 8 T. L. R. 223 608
——— *v.* Cocking (1868), L. R. 3 Q. B. 672; 9 B. & S. 503; 37 L. J. (Q. B.) 250; 18 L. T. 560, 16 W. R. 933 436, 612
——— *v.* Cooke (1846), 16 L. J. (CH.) 140; 11 Jur. 77 148
——— *v.* Dale (1878), 9 Ch. D. 78; 27 W. R. 149 303
——— *v.* Dyer (1706), 11 Mod. Rep. 73 101
——— *v.* Gill (1846), 2 C. B. 861; 3 Dow. & L. 823; 15 L. J. (C. P.) 187; 10 Jur. 666 61
——— *v.* London and North Western Rail. Co. (1863), 4 B. & S. 326; 32 L. J. (Q. B.) 318; 10 Jur. (N. S.) 234; 11 W. R. 884 . 312, 450, 612, 614, 615
——— *v.* Raindle (1796), 3 Ves. 256 79
——— *v.* Rawlins (1806), 7 East, 409; 3 Smith (K. B.), 405 67, 91, 98
——— *v.* Shaw (1876), 1 Ex. D. 425 609
——— *v.* Taylor (1868), 18 L. T. 657 614
——— Janson & Co. *v.* Hutchinson & Co., [1895] 1 Q. B. 737; 64 L. J. (Q. B.) 359; 14 R. 354; 72 L. T. 437; 43 W. R. 533, C. A. 557
Brown's Case (1581), 4 Co. Rep. 21 a 78, 84, 102
Browne *v.* La Trinidad (1887), 37 Ch. D. 1; 57 L. J. (CH.) 292; 58 L. T. 137; 36 W. R. 289, C. A. 334
Bruce's (Lord) Case (1728), 2 Stra. 819 331
Bruerton's Case (1594), 6 Co. Rep 1 a; Co. Litt. 676 14
Brune *v.* James, [1898] 1 Q. B. 417; 67 L. J. (Q. B.) 283; 77 L. T. 802; 46 W. R. 257 602
Brunsden *v.* Humphrey (1884), 14 Q. B. D. 141; 49 J. P. 4; 53 L. J. (Q. B.) 476; 51 L. T. 529; 32 W. R. 944, C. A. 460, 535, 580
Brunskill *v.* Powell (1850), 19 L. J. (EX.) 362; 1 L. M. & P. 550 459
Brutton *v.* Branson, [1898] 2 Q. B. 219; 67 L. J. (Q. B.) 827; 79 L. T. 247; 14 T. L. R. 457 485
——— *v.* Thomas (1858), 1 F. & F. 377 489
Bryant *v.* Herbert (1878), 3 C. P. D. 389; 47 L. J. (C. P.) 670; 39 L. T. 17; 26 W. R. 898, C. A. 428, 591
——— *v.* North Metropolitan Tramways Co. (1890), 6 T. L. R. 396 . . . 602
Buckhurst's (Lord) Case (1662), 1 Keb. 278 240, 254
Buckland *v.* Fowcher (1486), 10 Co. Rep. 27 a 371
Buckley *v.* Hann (1850), 5 Exch. 43; 7 Dow. & L. 188; 19 L. J. (EX.) 151; 14 Jur. 226 450, 452
——— *v.* Irish Industrial Building Society (1888), 22 L. R. Ir. 579 . . . 579
Bugden *v.* Bignold (1843), 2 Y. & C. Ch. Cas. 377 17
Bull *v.* Birkbeck (1843), 2 Y. & C. Ch. Cas. 447. 35
Bullock *v.* Dibler (1593), 4 Co. Rep. 23 a; Moore (K. B.), 596; Poph. 38 . 77, 96
Bullock's Settled Estate, *Re*, Lofthouse *v.* Haggard (1904), 91 L. T. 651 . . 30
Bult *v.* Morrell (1840), 12 Ad. & El. 745; 10 L. J. (Q. B.) 52 362
Bunter *v.* Coke (1707), 1 Salk. 238 111
Bunting *v.* Lepingwell (1585), 4 Co. Rep. 29 b 69, 96
Burdet *v.* Mathewman (1632), Clay. 107 6
Burgess *v.* Foster (1593), 1 Leon. 289; Cro. Eliz. 48 17
——— *v.* Wheate (1759), 1 Eden, 177; 1 Wm. Bl. 123 56
Burgoin *v.* Spurling (1632), Cro. Car. 283 93

PAGE
Burkill *v.* Thomas, [1892] 1 Q. B. 312 ; 61 L. J. (Q. B.) 322 ; 66 L. T. 150 ; 40 W. R. 250, C. A. 439
Burland *v.* Earle, [1902] A. C. 83 ; 71 L. J. (P. C.) 1 ; 85 L. T. 553 ; 18 T. L. R. 41 ; 50 W. R. 241 ; 9 Mans. 17 346, 347, 394
Burnett *v.* Chetwood (1720), cited 2 Mer. 441 150
Burnley Equitable Co-operative and Industrial Society, Ltd. *v.* Casson, [1891] 1 Q. B. 75 ; 55 J. P. 166 ; 60 L. J. (M. C.) 59 ; 63 L. T. 652 ; 39 W. R. 124 . 379
Burrell *v.* Dodd (1803), 3 Bos. & P. 378 68
Burridge *v.* Nicholetts (1861), 6 H. & N. 383 ; 30 L. J. (EX.) 145 ; 3 L. T. 703 ; 9 W. R. 345 419
Burton *v.* Le Gros (1865), 34 L. J. (Q. B.) 91 425
Butchers' Co. *v.* Bullock (1803), 3 Bos. & P. 434 339
——— *v.* Morey (1790), 1 Hy. Bl. 370 335
Butler *v.* Ablewhite (1859), 6 C. B. (N. S.) 740 ; 28 L. J. (C. P.) 292 ; 5 Jur. (N. S.) 1268 ; 7 W. R. 583 449
——— *v.* Archer (1593), 14 Vin. Abr. Heriot, 297 ; Owen, 152 41
——— (or Bully) *v.* Palmer (1699), 1 Salk. 191 ; 12 Mod. Rep. 247 . . 319, 352
Butterworth *v.* Kelly (1888), 4 T. L. R. 430 146, 167
——— *v.* Robinson (1801), 5 Ves. 709 146
Buxton *v.* James (1851), 5 De G. & Sm. 80 ; 16 Jur. 15 166
Byrd *v.* Wilford (1593), 2 Cro. Eliz. 464 304, 306, 313, 380
Byrne *v.* Van Tienhoven (1886), 5 C. P. D. 344 ; 44 J. P. 667 ; 49 L. J. (C. P.) 316 ; 42 L. T. 371 451
Byron (Lord) *v.* Dugdale (1823), 1 L. J. (O. S.) (CH.) 239 144

C.

CAGE *v.* Dod (1650), Sty. 233 25
Caird *v.* Sime (1887), 12 App. Cas. 326 ; 57 L. J. (P. C.) 2 ; 57 L. T. 634 ; 36 W. R. 199 136, 139, 150, 151, 152, 163
Calcutta Jute Mills Co. *v.* Nicholson (1876), 1 Ex. D. 437 ; 45 L. J. (Q. B.) 821 ; 35 L. T. 275 ; 25 W. R. 71 311
Caldwell *v.* Pagham Harbour Reclamation Co. (1876), 2 Ch. D. 221 ; 45 L. J. (CH.) 796 ; 24 W. R. 690 365
Caledonian and Dumbartonshire Rail. Co. *v.* Helensburgh Magistrates (1856), 2 Macq. 391 ; 2 Jur. (N. S.) 695 ; 4 W. R. 671 321
Callaghan *v.* Twiss (1847), 9 I. L. R. 422 250
Calmady *v.* Rowe (1844), 6 C. B. 861 4
Campbell *v.* Fairlie (1880), 49 L. J. (Q. B.) 445 490
——— *v.* Loader (1864), 3 H. & C. 520 ; 34 L. J. (EX.) 55 ; 25 L. T. 937 ; 20 W. R. 489 348
——— *v.* Maund (1836), 5 Ad. & El. 865 ; 1 Nev. & P. (M. C.) 558 ; 2 H. & W. 457 ; 6 L. J. (M. C.) 145 349
——— *v.* Scott (1842), 11 Sim. 31 ; 11 L. J. (CH.) 166 ; 6 Jur. 186 147, 164, 166
Canadian Pacific Rail. Co. *v.* Parke, [1899] A. C. 535 ; 68 L. J. (P. C.) 89 ; 81 L. T. 127 ; 15 T. L. R. 427 ; 48 W. R. 118 . 389
——— *v.* Roy, [1902] A. C. 220 ; 71 L. J. (P. C.) 51 ; 86 L. T. 127 ; 18 T. L. R. 200 ; 50 W. R. 415 389
Cannon *v.* Johnson (1870), L. R. 11 Eq. 90 ; 40 L. J. (CH.) 46 ; 23 L. T. 583 ; 19 W. R. 175 676
Canterbury (Archbishop), *Ex parte*, *Re* East Lincolnshire Rail. Co.'s Acts. *See* East Lincolnshire Rail. Co.'s Acts, *Re*, *Ex parte* Canterbury (Archbishop).
Capital and Counties Bank *v.* Rhodes, [1903] 1 Ch. 631 ; 72 L. J. (CH.) 336 ; 51 W. R. 470 ; 88 L. T. 255 ; 19 T. L. R. 280, C. A. 111
Capper's Case. *See* China Steamship and Labuan Coal Co., *Re* Capper's Case.
Caproni *v.* Alberti (1891), 65 L. T. 785 ; 40 W. R. 235 206
Car *v.* Ellison (1744), 3 Atk. 73 14, 91
Carington (Lord) *v.* Wycombe Rail. Co. (1868), 3 Ch. App. 377 ; 37 L. J. (CH.) 213 ; 18 L. T. 96 ; 16 W. R. 494 372
Carlisle (Earl) *v.* Armstrong (1757), 1 Burr. 333 52
Carmarthen (Marquis) *v.* Hanson (1731), 3 Swan. 294 70
Carmarthen Corporation *v.* Lewis (1834), 6 Car. & P. 608 356
Carnarvon (Earl) *v.* Villebois (1844), 13 M. & W. 313 ; 14 L. J. (EX.) 238 . . 7
Carr *v.* Singer (1755), 2 Ves. Sen. 604 71
—— *v.* Stringer (1858), E. B. & E. 123 609
Carron Iron Co. *v.* Maclaren (1855), 5 H. L. Cas. 416 ; 24 L. J. (CH.) 620 ; 3 W. R. 597 312

PAGE
Carson *v.* Pickersgill & Sons (1885), 14 Q. B. D. 859; 49 J. P. 612; 54 L. J. (Q. B.) 484; 52 L. T. 950; 33 W. R. 589, C. A. 584
Carter *v.* Carter (1857), 3 K. & J. 617; 27 L. J. (CH.) 74 98
——— *v.* ———, [1896] 1 Ch. 62; 65 L. J. (CH.) 86; 73 L. T. 437; 44 W. R. 73; 13 R. 824 108
——— *v.* Ely (Dean) (1835), 4 L. J. (CH.) 132; 7 Sim. 211 380
——— *v.* Sebright (1859), 26 Beav. 374; 28 L. J. (CH.) 411; 5 Jur. (N. S.) 259; 7 W. R. 225 35
——— *v.* Smith (1855), 4 E. & B. 696; 3 C. L. R. 848; 24 L. J. (Q. B.) 141; 1 Jur. (N. S.) 279; 3 W. R. 235. 549, 617
Carter's (Sir John) Case (1774), Lofft, 516 327
Cary *v.* Kearsley (1802), 4 Esp. 168 147, 165
—— *v.* Longman (1801), 1 East, 360 142, 146, 167
Case 30 (1566), 3 Leon. 13 45
Casella *v.* Darton (1873), L. R. 8 C. P. 100; 42 L. J. (C. P.) 58 489
Casey, *Re* (1852), 3 I. C. L. R. 22 285
"Cashmere," The (1890), 15 P. D. 121; 59 L. J. (P.) 57; 62 L. T. 814; 38 W. R. 623; 6 Asp. M. L. C. 515 596
Cate *v.* Devon and Exeter Constitutional Newspaper Co. (1889), 40 Ch. D. 500; 58 L. J. (CH.) 288; 60 L. T. 672; 37 W. R. 487 142, 143, 146, 152, 154, 164
Cator *v.* Croydon Canal Co. (1841), 4 Y. & C. (EX.) 405 19
Cattermole *v.* Atlantic Transport Co., [1902] 1 K. B. 204; 66 J. P. 4; 71 L. J. (K. B.) 173, C. A. 579
Cattley *v.* Arnold (1858), 4 K. & J. 595 12, 20, 111
Cawley *v.* Furnell (1851), 12 C. B. 291; 20 L. J. (C. P.) 197; 15 Jur. 908 . . . 603
Cesena Sulphur Co. *v.* Nicholson (1876), 1 Ex. D. 428; 45 L. J. (EX.) 821; 35 L. T. 275; 25 W. R. 71 311, 312
Chaddock *v.* British South Africa Co., [1896] 2 Q. B. 153; 65 L. J. (Q. B.) 635; 74 L. T. 755; 44 W. R. 658, C. A. 396
Challoner *v.* Murhall (1795), 2 Ves. 524 73, 110
Channel Coaling Co. *v.* Ross, [1907] 1 K. B. 145; 76 L. J. (K. B.) 145; 95 L. T. 728 479, 613
Chantrell *v.* Randall (1661), 1 Lev. 20 76, 79, 92
Chapleo *v.* Brunswick Building Society (1881), 6 Q. B. D. 696; 50 L. J. (Q. B.) 372; 44 L. T. 449; 29 W. R. 529, C. A. 361, 363
Chaplin *v.* Chaplin (1733), 3 P. Wms. 239 78
Chapman *v.* Cowlan (1810), 13 East, 10; 12 R. R. 294 10
——— *v.* Pendleton (1609), 2 Brownl. 293 38, 40, 42
——— *v.* Sharpe (1682), 2 Show. 184 80
——— & Sons *v.* Withers & Co. (1887), 58 L. T. 24 603
Chappell *v.* Boosey (1882), 21 Ch. D. 232; 51 L. J. (CH.) 625; 46 L. T. 854; 30 W. R. 733 177
——— *v.* Davidson (1855), 2 K. & J. 123 165, 187
——— *v.* ——— (1856), 8 De G. M. & G. 1 187
——— *v.* ——— (1856), 18 C. B. 194; 25 L. J. (C. P.) 225; 2 Jur. (N. S.) 544; 4 W. R. 559 153, 168
——— *v.* Purday (1843), 12 M. & W. 303; 1 Dow. & L. 458; 13 L. J. (EX.) 7...153, 156
——— *v.* ——— (1845), 14 M. & W. 309; 1 Dow. & L. 458; 13 L. J. (EX.) 7; 9 Jur. 495 138
——— *v.* Sheard (1855), 2 K. & J. 117; 1 Jur. (N. S.) 996; 3 W. R. 646 . 165, 176
Charman *v.* South Eastern Rail. Co. (1888), 21 Q. B. D. 524; 53 J. P. 86; 57 L. J. (Q. B.) 597; 37 W. R. 8, C. A. 390
Chatfield *v.* Sedgwick (1879), 4 C. P. D. 459; 27 W. R. 790, C. A. 586
Chatterton *v.* Cave (1878), 3 App. Cas. 483; 47 L. J. (C. P.) 545; 38 L. T. 397; 26 W. R. 498 164, 183
Cheesewright *v.* Thorn (1869), 38 L. J. (CH.) 615; 20 L. T. 152 444
Cheetham *v.* Manchester Corporation (1875), L. R. 10 C. P. 249; 44 L. J. (C. P.) 139; 32 L. T. 28 388
Chesterfield (Lord) *v.* Harris, [1908] 1 Ch. 230; 77 L. J. (CH.) 111; 98 L. T. 236; 24 T. L. R. 105; [1908] 2 Ch. 397; 77 L. J. (CH.) 688; 99 L. T. 558; 24 T. L. R. 763; 52 Sol. Jo. 639, C. A. 5
Chew *v.* Holroyd (1852), 8 Exch. 249; 22 L. J. (EX.) 95; 1 W. R. 68 . . . 431
Chichester *v.* Hall (1851), 17 L. T. (o. s.) 121 45
Child *v.* Hudson's Bay Co. (1723), 2 P. Wms. 207 335
Chillington Iron Co., *Re* (1885), 29 Ch. D. 159; 54 L. J. (CH.) 624; 52 L. T. 504; 33 W. R. 442 349

PAGE
Chilton *v.* Carrington (1855), 15 C. B. 730; 3 C. L. R. 392; 24 L. J. (C. P.) 78; 1 Jur. (N. S.) 477; 3 W. R. 248 429, 591
——— *v.* London and Croydon Rail. Co. (1847), 16 M. & W. 212; 16 L. J. (EX.) 89; 11 Jur. 149 335
——— *v.* Progress Printing and Publishing Co., [1895] 2 Ch. 29; 64 L. J. (CH.) 510; 72 L. T. 412; 43 W. R. 456, C. A. 143
China Steamship and Labuan Coal Co., *Re*, Capper's Case (1868), 3 Ch. App. 458; 16 W. R. 1002 322
Chivers *v.* Savage (1855), 5 E. & B. 697; 25 L. J. (Q. B.) 85; 2 Jur. (N. S.) 137; 4 W. R. 117 613
Christ Church (Dean) *v.* Buckingham (Duke) (1864), 10 L. T. (N. S.) 575; 12 W. R. 986 85
Christmas *v.* Jones, *Re* Jones. *See* Jones, *Re*, Christmas *v.* Jones.
Chudleigh's Case (1589), 1 Co. Rep. 119 b 373
Church *v.* Cudmore (1691), 2 Lut. 1181 80
——— *v.* Imperial Gas Light and Coke Co. (1838), 6 Ad. & El. 846; 3 Nev. & P. (Q. B.) 35; 1 Will. Woll. & H. 137; 7 L. J. (Q. B.) 118 . . 309, 383
——— *v.* Munday (1806), 12 Ves. 426 98
——— *v.* ——— (1808), 15 Ves. 403 89
Churchward *v.* Coleman (1866), L. R. 2 Q. B. 18; 36 L. J. (Q. B.) 57 . . . 615
——— *v.* Johnson (1890), 54 J. P. 326 609
Citizens' Life Assurance Co. *v.* Brown, [1904] A. C. 423; 73 L. J. (P. C.) 102; 9 L. T. 739; 20 T. L. R. 497; 53 W. R. 176 387, 388
City Bank, *Ex parte*, General Estates Co., *Re*. *See* General Estates Co., *Re*, *Ex parte* City Bank.
Clack *v.* Clack, [1906] 1 K. B. 483; 72 L. J. (K. B.) 274; 94 L. T. 516; 22 T. L. R. 313; 54 W. R. 375 533
Clare Hall, *Re* (1788), 5 Russ. 73 346
Claridge *v.* Evelyn (1821), 5 B. & Ald. 81 327
Clark *v.* Bishop (1872), 25 L. T. 908 183
——— *v.* Denton (1830), 1 B. & Ad. 92; 8 L. J. (O. S.) (K. B.) 333 . . 336, 338
——— *v.* Le Cren (1829), 9 B. & C. 52; 7 L. J. (O. S.) (K. B.) 186 339
Clark's Case (1596), 11 Co. Rep. 64 a 339, 340
Clarke *v.* Arden (1855), 24 L. J. (C. P.) 162; 16 C. B. 227; 3 C. L. R. 781; 1 Jur. (N. S.) 710; 3 W. R. 444 51, 53
——— *v.* Clayton (1860), 2 Giff. 333; 6 Jur. (N. S.) 1238; 3 L. T. 176 . . 69
——— *v.* Cuckfield Union Guardians (1852), 21 L. J. (Q. B.) 349; 1 B. C. C. 81; 16 Jur. 686 384
——— *v.* Imperial Gas Light Co. (1832), 1 Nev. & M. (K. B.) 206; 4 B. & Ad. 315; 2 L. J. (K. B.) 30 310
——— *v.* Price (1819), 2 Wils. (CH.) 157 158
——— *v.* Roche (1877), 36 L. T. 78, C. A. 609
——— *v.* Tucket (1690), 2 Vent. 182 338, 340
——— *v.* Twyford (1859), 7 W. R. 538; 5 Jur. (N. S.) 564 96, 106
Clarkson *v.* Musgrave (1882), 9 Q. B. D. 386; 51 L. J. (Q. B.) 525; 31 W. R. 47 603, 604
——— *v.* Woodhouse (1782), 3 Doug. (K. B.) 189 10
Clay *v.* Turley (1858), 27 L. J. (EX.) 2 489
Clayton *v.* Cookes (1742), 2 Atk. 449 57
——— *v.* Renton (1867), L. R. 1 Eq. 158; 36 L. J. (CH.) 428; 16 L. T. 48 . 444
Clegg *v.* Baretta (1887), 56 L. T. 775 428
Clement *v.* Maddick (1859), 1 Giff. 98; 5 Jur. (N. S.) 592 165
Clementi *v.* Goulding (1809), 2 Camp. 25; 11 East, 244 137, 143
Clements, *Re*, *Ex parte* Clements, [1901] 1 K. B. 260; 70 L. J. (K. B.) 58; 83 L. T. 464; 49 W. R. 176; 8 Mans. 27 554
——— *v.* London and North Western Rail. Co., [1894] 2 Q. B. 482; 58 J. P. 816; 42 W. R. 338; 9 R. 223, C. A. 605, 609
Clifford *v.* Thames Ironworks and Shipbuilding Co., [1898] 1 Q. B. 314; 67 L. J. (Q. B.) 244; 78 L. T. 164; 46 W. R. 222 603, 604, 605
Clifton *v.* Furley (1862), 7 H. & N. 783; 31 L. J. (EX.) 170; 10 W. R. 358. 599, 615
——— *v.* Molineux (1585), 4 Co. Rep. 27 a 49
Clinch *v.* Financial Corporation (1868), 4 Ch. App. 117; 38 L. J. (CH.) 1; 19 L. T. 334; 17 W. R. 84 365, 395
Clinton *v.* Bennett, [1908] 1 K. B. 109; 77 L. J. (K. B.) 52; 97 L. T. 789 . . 592
Clinton's Claim, *Re* National Motor Mail-Coach Co., Ltd. *See* National Motor Mail-Coach Co., Ltd., *Re*, Clinton's Claim.
Coats *v.* Herefordshire County Council, [1909] W. N. 129 359
Cobat's Case (1368), 2 Hale, P. C. 161, n. 262

PAGE
Cobbett *v.* Woodward (1872), L. R. 14 Eq. 407 ; 41 L. J. (CH.) 656 ; 27 L. T. 27 ; 20 W. R. 963 146
Cobbold *v.* Pryke (1879), 4 Ex. D. 315 ; 49 L. J. (EX.) 8 ; 28 W. R. 259 . . 433
Cocks *v.* Great Western Rail. Co. (1886), 3 T. L. R. 92, C. A. 396
——— *v.* Purday (1848), 5 C. B. 860 ; 17 L. J. (C. P.) 273 ; 12 Jur. 677 . . 168
Coe *v.* Wise (1866), L. R. 1 Q. B. 711 ; 7 B. &. S. 831 ; 37 L. J. (Q. B.) 262 ; 14 L. T. 891 ; 14 W. R. 865 389, 390
Coffin *v.* Dyke (1884), 48 J. P. 757 427
Cohen *v.* Wilkinson (1849), 18 L. J. (CH.) 378 ; 1 Mac. & G. 481 ; 1 H. & Tw. 554 ; 5 Ry. & Can. Cas. 758 ; 14 Jur. 535 360
Colburn *v.* Simms (1843), 2 Hare, 543 ; 12 L. J. (CH.) 388 ; 7 Jur. 1140 . . 169
Colchester Corporation *v.* Brooke (1846), 7 Q. B. 339 ; 16 L. J. (Q. B.) 173 ; 10 Jur. 610 373, 399, 401
——————————— *v.* Goodwin (1666), Cart. 114 338
——————————— *v.* Lowten (1813), 1 Ves. & B. 226 375
——————————— *v.* Seaber (1766), 3 Burr. 186 ; 61 Wm. Bl. 591 . 308, 319, 331, 399
Cole *v.* Coles (1848), 6 Hare, 517 17
—— *v.* Gear (1888), 4 T. L. R. 246 185
—— *v.* Jealous (1845), 5 Hare, 51 107
Collette *v.* Goode (1878), 7 Ch. D. 842 ; 47 L. J. (CH.) 370 ; 38 L. T. 504 . . 168
Collingridge *v.* Emmott (1887), 57 L. T. 864 148, 152
Collingwood's Trusts, *Re* (1858), 6 W. R. 536 88
Collis *v.* Cater, Stoffell and Fortt (1898), 78 L. T. 613 146
Collman *v.* Mills, [1897] 1 Q. B. 396 ; 61 J. P. 102 ; 66 L. J. (Q. B.) 170 ; 75 L. T. 590 ; 18 Cox, C. C. 481 ; 13 T. L. R. 122 338
Colman *v.* Eastern Counties Rail. Co. (1846), 10 Beav. 1 ; 4 Ry. & Can. Cas. 513 ; 16 L. J. (CH.) 73 ; 11 Jur. 74 359, 360, 394
Compagnie Générale Transatlantique *v.* Law (Thomas) & Co., "La Bourgogne," [1899] A. C. 431 ; 68 L. J. (P.) 104 ; 80 L. T. 845 ; 8 Asp. M. L. C. 550 . 312, 395
Companies Acts, *Re*, *Ex parte* Watson (1888), 21 Q. B. D. 301 ; 36 W. R. 829 ; 57 L. J. (Q. B.) 609 360, 363, 364
Compton *v.* Collinson (1788), 2 Bro. C. C. 377 96
——— *v.* ——— (1790), 1 Hy. Bl. 334. 66
Comyns *v.* Hyde (1895), 72 L. T. 250 142, 154, 198
Coningsby (Lord) *v.* Steed (1723), 8 Mod. Rep. 192 249
Conolly *v.* Gorman, [1898] 1 I. R. 20 ; 30 L. T. 109, C. A. 357
Conroy *v.* Peacock, [1897] 2 Q. B. 6 ; 61 J. P. 310 ; 66 L. J. (Q. B.) 425 ; 76 L. T. 465 ; 45 W. R. 502 485
Constable's (Sir Henry) Case (1601), 5 Co. Rep. 106 ; 1 Bl. Com. 291 . . 6, 233
Contract Corporation, *Ex parte*, *Re* Barned's Banking Co. *See* Barned's Banking Co., *Re*, *Ex parte* Contract Corporation.
——————————— *Re*, Ebbw Vale Co.'s Claim (1869), L. R. 8 Eq. 14 . . 383
Conybeare *v.* Farries (1870), L. R. 5 Exch. 16 ; 39 L. J. (EX.) 26 ; 21 L. T. 497 . 609
Conyer's Free Grammar School at Yarm (1853), 10 Hare, Appendix I. p. v. . 400
Cooch *v.* Gooodman (1842), 2 Q. B. 580 ; 2 Gal. & Dav. 159 ; 11 L. J. (Q. B.) 225 ; 6 Jur. 779 303, 308, 309, 310
Cook, *Re* (1845), 7 Q. B. 653 ; 14 L. J. (M. C.) 188 ; 9 Jur. 869 266
—— *v.* Crews (1894), 10 R. 345 587
—— *v.* Gordon (1892), 61 L. J. (Q. B.) 445 608
—— *v.* Loveland (1799), 2 Bos. & P. 31 345
Cooke *v.* Midland Great Western Rail. of Ireland, [1909] A. C. 229 ; 78 L. J. (P. C.) 76 387
—— *v.* Smith (1896), 12 T. L. R. 629, C. A. 613
Coombes *v.* Gibson (1783), 1 Bro. C. C. 273 70
Cooper *v.* Norfolk Rail. Co. (1849), 3 Exch. 546 ; 6 Ry. & Can. Cas. 94 ; 18 L. J. (EX.) 176 ; 13 Jur. 195 64
——— *v.* Stephens, [1895] 1 Ch. 567 ; 64 L. J. (CH.) 403 ; 72 L. T. 390 ; 13 R. 444 ; 43 W. R. 444 161, 164, 203
——— *v.* Whittingham (1880), 15 Ch. D. 501 ; 49 L. J. (CH.) 752 ; 43 L. T. 16 ; 28 W. R. 720 163, 165, 167, 169, 204, 579
——— *v.* Willis (1906), 22 T. L. R. 582 487
Coote *v.* Ford (1900), 83 L. T. 482 ; 17 T. L. R. 58 9
—— *v.* Judd (1883), 23 Ch. D. 727 ; 48 L. T. 205 ; 31 W. R. 639 . . . 153
Cope *v.* Thames Haven Rail. Co. (1849), 3 Exch. 841 ; 6 Ry. & Can. Cas. 83 ; 18 L. J. (EX.) 345 379
Copeland *v.* Sinister, [1893] P. 16 ; 62 L. J. (P.) 38 ; 1 R. 469 ; 68 L. T. 257 ; 41 W. R. 269 646

PAGE
Copeman *v.* Hart (1863), 14 C. B. (N. S.) 731 ; 33 L. J. (C. P.) 107 451
Copestake *v.* Hoper, [1908] 2 Ch. 10 ; 77 L. J. (CH.) 610 ; 99 L. T. 371 ; 24 T. L. R. 628 ; 52 Sol. Jo. 516, C. A. 40, 42, 66
Copper Miners' Co. *v.* Fox (1851), 16 Q. B. 229 ; 20 L. J. (Q. B.) 174 ; 15 Jur. 703 383
Corbett, *Re* (1859), 4 H. & N. 452 ; 28 L. J. (EX.) 254 615
——— *v.* General Steam Navigation Co. (1859), 4 H. & N. 482 ; 28 L. J. (EX.) 214 ; 7 W. R. 498 449
Corn *v.* Pastow (1602), Cro. Eliz. 894 248
Cornford *v.* Carlton Bank, Ltd., [1900] 1 Q. B. 22 ; 69 L. J. (Q. B.) 1020 ; 81 L. T. 415 ; 16 T. L. R. 12, C. A. 387, 388
Corporations Case (1598), 4 Co. Rep. 77 b 352
Correspondent Newspaper Co. *v.* Saunders (1865), 11 Jur. (N. S.) 540 ; 12 L. T. 540 ; 13 W. R. 804 153
Corsellis, *Re*, Lawton *v.* Elwes (1887), 34 Ch. D. 675 ; 51 J. P. 597 ; 56 L. J. (CH.) 294 ; 56 L. T. 411 ; 35 W. R. 309, C. A. 64
——— *v.* London County Council, [1908] 1 Ch. 13 ; 71 J. P. 561 ; 77 L. J. (CH.) 120 ; 98 L. T. 475 ; 24 T. L. R. 80 ; 6 L. G. R. 78, C. A. . . . 4
Cortis *v.* Kent Waterworks Co. (1827), 7 B. & C. 316 ; 5 L. J. (O. S.) (M. C.) 106 . 345
Cotton *v.* Davies (1717), 1 Stra. 53 345, 351
Cotton's Case (1612), Godb. 191 367
County Life Assurance Co., *Re* (1870), 5 Ch. App. 288 ; 38 L. J. (CH.) 471 ; 22 L. T. 537 361
Cousins *v.* Lombard Bank (1876), 1 Ex. D. 404 ; 45 L. J. (EX.) 573 ; 35 L. T. 484 ; 25 W. R. 116 603
Cowan *v.* Carlill (1885), 33 W. R. 583 551
——— *v.* Milbourn (1867), L. R. 2 Exch. 230 ; 36 L. J. (EX.) 124 ; 16 L. T. 290 ; 15 W. R. 750 144
——— *v.* O'Connor (1888), 20 Q. B. D. 640 ; 57 L. J. (Q. B.) 401 ; 58 L. T. 857 ; 36 W. R. 895 451
Cowen *v.* Hulton (1882), 46 L. T. 897 165
Cowley (Earl) *v.* Wellesley (1866), 35 Beav. 640 26
Cowling *v.* Topping, [1906] 1 K. B. 466 ; 70 J. P. 95 ; 75 L. J. (K. B.) 176 ; 94 L. T. 209 ; 22 T. L. R. 219 ; 54 W. R. 423 643
Cowney *v.* Thompson (1890), 89 L. T. Jo. 222 447
Cowper *v.* Clerk (1732), 3 P. Wms. 155 31, 64
Cox *v.* Cox (1853), 11 Hare, 118 159, 160
—— *v.* Higford (1710), 1 Eq. Cas. Abr. 121 ; 2 Vern. 664 48, 52
Crampton *v.* Varna Rail. Co. (1872), 7 Ch. App. 562 ; 41 L. J. (CH.) 817 ; 20 W. R. 713 386
Crawley *v.* Kingsmill (1618), Noy, 24 ; Hob. 207 58
Creaton *v.* Creaton (1856), 3 Sm. & G. 386 ; 26 L. J. (CH.) 266 ; 2 Jur. (N. S.) 1223 ; 5 W. R. 123 81
Crescent (The), (1893), 62 L. J. 63 ; 68 L. T. 556 ; 1 R. 613 ; 41 W. R. 533 ; 7 Asp. M. L. C. 297, C. A. 608
Cresswell *v.* Hawkins (1857), 3 Jur. (N. S.) 407 67, 70, 73, 111, 113
Critchley *v.* Brown (1885), 2 T. L. R. 238 442
Crook *v.* Seaford Corporation (1871), 6 Ch. App. 551 ; 25 L. T. 1 ; 19 W. R. 938 381
Croom *v.* Guise (1837), 4 Bing. (N. C.) 148 ; 5 Scott, 453 ; 3 Hodg. 277 . . . 44
Crossfield *v.* Such (1852), 8 Exch. 159 ; 22 L. J. (EX.) 65 ; 1 W. R. 82 . . . 493
Crowder *v.* Oldfield (1706), 1 Salk. 170 ; 2 Ld. Raym. 1225 113
Crowe's Mortgage *Re* (1871), L. R. 13 Eq. 26 ; 41 L. J. (CH.) 32 88
Crowley *v.* Vitty (1852), 7 Exch. 319 ; 21 L. J. (EX.) 135 437, 12
Crowther *v.* Oldfield (1698), 1 Lut. 125 ; 1 Salk. 170, 364 ; 3 Salk. 13 ; Holt (K. B.), 146 67
Croydon Hospital *v.* Farley (1816), 6 Taunt. 467 ; 2 Marsh. 174 308
Crystal Palace Gas Co. *v.* Idris (1900), 64 J. P. 452 ; 82 L. T. 200 ; 16 T. L. R. 180 428
Cuddon (or Cudden) *v.* Estwick (1703), 4 Mod. Rep. 123 ; 1 Salk. 192 . 315, 335
——— *v.* Tite (1858), 1 Giff. 395 ; 4 Jur. (N. S.) 579 ; 6 W. R. 606 . . . 26
Cullerne *v.* London and Suburban General Permanent Building Society (1890), 25 Q. B. D. 485 ; 55 J. P. 148 ; 59 L. J. (Q. B.) 525 ; 63 L. T. 511 ; 39 W. R. 88, C. A. 365
Cully, *Re* (1833), 5 B. & Ad. 230 ; 2 Nev. & M. 61 ; 2 L. J. (M. C.) 102 . 283, 284
Cumberland *v.* Copeland (1862), 1 H. & C. 194 ; 31 L. J. (EX.) 353 ; 9 Jur. (N. S.) 253 ; 7 L. T. 334 ; 10 W. R. 581 159, 181
——— (Earl) *v.* Cumberland (Dowager Countess) (1615), Hob. 85 . . 248
Curtise *v.* Cottel (1586), 2 Leon. 72 111

PAGE
Curtis *v.* Daniel (1808), 10 East, 273 23
——— *v.* Old Monkland Conservative Association, [1906] A. C. 86; 75 L. J. (P. C.) 31; 94 L. T. 7; 22 T. L. R. 177 358, 377
——— *v.* Stovin (1889), 22 Q. B. D. 513; 58 L. J. (Q. B.) 174; 60 L. T. 772; 37 W. R. 315 439
Curzon *v.* Lomas (1803), 5 Esp. 60 4, 20
Cusack *v.* London and North Western Rail. Co., [1891] 1 Q. B. 347; 55 J. P. 341; 60 L. J. (Q. B.) 208; 64 L. T. 45; 39 W. R. 244, C. A. 606
Cuthbert *v.* Lempriere (1814), 3 M. & S. 159 109
Cuthbertson *v.* Parsons (1852), 12 C. B. 304; 21 L. J. (C. P.) 165; 16 Jur. 860 . 603

D.

DAGLISH (or Dalglish) *v.* Jarvie (1850), 2 Mac. & G. 231; 2 H. & Tw. 437; 20 L. J. (CH.) 475; 14 Jur. 945 189
Dakin's Case (1672), 2 Saund. 291 274
D'Almaine *v.* Boosey (1835), 1 Y. & C. (EX.) 288; 4 L. J. (EX.) (EQ.) 21. 146, 186, 187
Damerell *v.* Protheroe (1847), 10 Q. B. 20; 16 L. J. (Q. B.) 170; 11 Jur. 331 . 39
Daniels *v.* Charsley (1851), 11 C. B. 739; 21 L. J. (C. P.) 37; 15 Jur. 1161 . . 609
D'Arcy *v.* Tamar, Kit Hill, and Callington Rail. Co. (1867), L. R. 2 Exch. 158; 4 H. & C. 463; 36 L. J. (EX.) 37; 12 Jur. (N. S.) 548; 14 L. T. 626; 14 W. R. 968 310, 345, 361
Darke (Elizabeth), *Re* (1859), 1 Sw. & Tr. 516; 29 L. J. (P.) 71; 2 L. T. 24; 8 W. R. 273 357
Darley *v.* R. (1845), 12 Cl. & Fin. 523, H. L. 333
Darnot *v.* United African Lands, Ltd., [1901] 1 Ch. 518; 70 L. J. (CH.) 306; 84 L. T. 309; 17 T. L. R. 245; 49 W. R. 322; 8 Mans. 179, C. A. . . . 347
Darrell *v.* Bridge (1749), 1 Wm. Bl. 46 12
Dartford Union Guardians *v.* Trickett (1888), 53 J. P. 277; 59 L. T. 754 . . 381
Daugars *v.* Rivaz (1860), 28 Beav. 233; 29 L. J. (CH.) 685; 6 Jur. (N. S.) 854; 8 W. R. 225 400
David *v.* Britannic Merthyr Coal Co., [1909] 2 K. B. 146; 25 T. L. R. 431, C. A. 390
——— *v.* Howe (1884), 27 Ch. D. 533; 53 L. J. (CH.) 1053; 50 L. T. 753; 32 W. R. 844 443
Davidson, *Ex parte* (1856), 18 C. B. 297; 25 L. J. (C. P.) 237; 2 Jur. (N. S.) 1024; 4 W. R. 593 156
——— *v.* Bohn (1848), 6 C. B. 456; 18 L. J. (C. P.) 15; 12 Jur. 922 . . 202
Davie's (Lord) Case (1584), 1 Leon. 288 62
Davies *v.* Brecknell (1870), L. R. 2 P. & D. 177; 40 L. J. (P.) 15; 23 L. T. 569; 19 W. R. 136 645
——— *v.* Fletcher (1853), 2 E. & B. 271; 22 L. J. (Q. B.) 429 425
——— *v.* Gas Light and Coke Co., [1909] 1 Ch. 708; 25 T. L. R. 428, C. A. . 324
——— *v.* Morgan (1831), 1 Cr. & J. 587; 1 Tyr. 457; 9 L. J. (O. S.) (EX.) 153 340, 341
——— *v.* Williams (1879), 13 Ch. D. 550; 49 L. J. (CH.) 352; 42 L. T. 469; 28 W. R. 223 434
Davies' Case (1598), Cro. Eliz. 611 5
Davis *v.* Benjamin, [1906] 2 Ch. 491; 75 L. J. (CH.) 800; 22 T. L. R. 702; 95 L. T. 671 143, 146, 198, 205, 206
——— *v.* Bromley Corporation, [1908] 1 K. B. 170; 71 J. P. 513; 77 L. J. (K. B.) 51; 97 L. T. 705; 24 T. L. R. 11; 5 L. G. R. 1229, C. A. 390
——— *v.* Flagstaff Mining Co. (1877), 3 C. P. D. 228; 47 L. J. (C. P.) 503; 38 L. T. 769; 26 W. R. 431, C. A. 613
——— *v.* Hyman & Co., [1903] 1 K. B. 854; 72 L. J. (K. B.) 426; 88 L. T. 284; 19 T. L. R. 348; 51 W. R. 598, C. A. 553, 556
——— *v.* Pearce (1870), L. R. 5 C. P. 435; 22 L. T. 441; 18 W. R. 736 . . 615
——— *v.* Pembrokeshire Justices (1881), 7 Q. B. D. 513 219, 251
——— *v.* Walton (1852), 8 Exch. 153; 22 L. J. (EX.) 25; 16 Jur. 954; 1 W. R. 8 431
——— & Co. *v.* Comitti (1885), 54 L. J. (CH.) 419; 52 L. T. 539 . . . 143, 145
——— & Son *v.* Andrews, [1884] W. N. 94 554
Dawkins *v.* Paulet (Lord) (1869), L. R. 5 Q. B. 94; 9 B. & S. 768; 39 L. J. (Q. B.) 53; 21 L. T. 584; 18 W. R. 336 415
Daws, *Re* (1838), 8 Ad. & El. 936; 1 Per. & Dav. 146 286
Deakin, *Re*, *Ex parte* Cathcart, [1900] 2 Q. B. 478; 69 L. J. (Q. B.) 797; 83 L. T. 39, C. A. 600
Dearden *v.* Evans (1839), 5 M. & W. 11; 2 Horn. & H. 7; 8 L. J. (EX.) 171; 3 Jur. 703 23

PAGE
Dearing's Case (1590), Cro. Eliz. 193 275, 284
De Beers Consolidated Mines, Ltd. *v.* Howe, [1906] A. C. 455; 75 L. J. (K. B.) 858; 95 L. T. 221; 22 T. L. R. 756; 13 Mans. 394 312
Deep Sea Fishery Co.'s, Ltd., Claim. *See* Fenwick, Stobart & Co., *Re* Deep Sea Fishery Co.'s, Ltd., Claim.
De Grave *v.* Monmouth Corporation (1830), 4 C. & P. 111 384
Delacherois *v.* Delacherios (1864), 11 H. L. Cas. 62; 4 New Rep. 501; 10 Jur. (N. S.) 886; 10 L. T. 884; 13 W. R. 24 3, 11, 12, 20, 21, 56
Delobbel-Flipo *v.* Varty, [1893] 1 Q. B. 663; 62 L. J. (Q. B.) 398; 5 R. 347; 68 L. T. 797; 42 W. R. 48 441
Dendy *v.* Simpson (1856), 18 C. B. 831; 2 Jur. (N. S.) 642 4
Dening *v.* Ware (1856), 22 Beav. 184 106
Denn d. Joddrell *v.* Johnson (1808), 10 East, 266 50
——— Goodwin *v.* Spray (1786), 1 Term Rep. 466 9, 10, 86
Dennison *v.* Ashdown (1897), 13 T. L. R. 226 161, 181
Denny *v.* Bennett (1896), 44 W. R. 333 427, 485
——— *v.* Lemman (1616), Hob. 135 32
Denny's (Sir Anthony) Case (1586), 2 Leon. 190 20
Denton *v.* Marshall (1863), 1 H. & C. 654; 32 L. J. (EX.) 89; 9 Jur. (N. S.) 337; 7 L. T. 689; 11 W. R. 268 428
Derby Canal Co. *v.* Wilmot (1808), 9 East, 360 309
——— Corporation *v.* Derbyshire County Council, [1897] A. C. 550; 62 J. P. 4; 66 L. J. (Q. B.) 701; 77 L. T. 107; 46 W. R. 48 681
D'Errico *v.* Samuel, [1896] 1 Q. B. 163; 65 L. J. (Q. B.) 197; 73 L. T. 680; 44 W. R. 356, C. A. 440
De Souza *v.* Cobden, [1891] 1 Q. B. 687; 55 J. P. 565; 60 L. J. (Q. B.) 533; 65 L. T. 130; 39 W. R. 454, C. A. 322
De Vitre *v.* Betts (1873), L. R. 6 H. L. 319; 42 L. J. (CH.) 841; 21 W. R. 705 166
Devonshire (Duke) *v.* O'Connor (1890), 24 Q. B. D. 468; 54 J. P. 740; 59 L. J. (Q. B.) 206; 62 L. T. 917; 38 W. R. 420, C. A. 21
Dews *v.* Riley (1851), 11 C. B. 434; 20 L. J. (C. P.) 264; 2 L. M. & P. 544; 15 Jur. 1159 418, 426
Dickens *v.* Lee (1844), 8 Jur. 183 147
——— *v.* Shaw (1823), Hall on the Seashore, 2nd ed., 1875, Appendix, p. xlv. . 5, 7
Dickinson *v.* Valpy (1829), 10 B. & C. 128; 5 Mood. & R. 126; 8 L. J. (O. S.) (K. B.) 51 362
Dicks *v.* Brooks (1880), 15 Ch. D. 22; 49 L. J. (CH.) 812; 43 L. T. 71; 29 W. R. 87, C. A. 203, 204
——— *v.* Yates (1881), 18 Ch. D. 76; 50 L. J. (CH.) 809; 44 L. T. 660, C. A. . 143, 153, 164, 165
Dickson's Case (1627), Het. 64 6
Dierken *v.* Philpot, [1901] 2 K. B. 380; 70 L. J. (K. B.) 675; 85 L. T. 246; 17 T. L. R. 491; 49 W. R. 703 439, 440, 612
Diggle *v.* London and Blackwall Rail. Co. (1850), 5 Exch. 442; 6 Ry. & Can. Cas. 590; 19 L. J. (EX.) 308: 14 Jur. 937 383
Dighton's Case (1670), T. Raym. 188 330
Dillon *v.* Fraine (1589), Poph. 70; 1 And. 309; Jenk. 276 83
Dimes *v.* Arden (1836), 5 L. J. (K. B.) 158; 6 Nev. & M. (K. B.) 494 18
——— *v.* Grand Junction Canal Co. (1846), 9 Q. B. 469; 5 Ry. Can. Cas. 34; 16 L. J. (Q. B.) 107; 11 Jur. 429; (1852) 3 H. L. Cas. 794; 17 Jur. 73 49, 57, 66, 90
Dingor *v.* Mathews (1889), 65 L. T. 748, n. 550, 602
Dod, Longstaffe & Co., *Re*, *Ex parte* Lamond (1888), 21 Q. B. D. 242; 57 L. J. (Q. B.) 503; 59 L. T. 467 585
Dodd *v.* Wigley (1849), 7 C. B. 106; 13 Jur. 410; 18 L. J. (C. P.) 117 . . . 459
Dodsley *v.* Kinnersley (1761), Amb. 403 147
Dodwell *v.* Oxford University (1680), 2 Vent. 33 335
Doe *v.* Huntingdon (1803), 4 East, 271 67
——— *v.* Sisson (1810), 12 East, 62 10
——— d. Askew *v.* Askew (1809), 10 East, 520 79
——— Bank of England *v.* Chambers (1836), 4 Ad. & El. 410; 6 Nev. & M. (K. B.) 539; 1 Har. & W. 749; 5 L. J. (K. B.) 123 309
——— Baverstock *v.* Rolfe (1838), 8 Ad. & El. 670; 3 Nev. & P. (Q. B.) 648; 7 L. J. (Q. B.) 251 77
——— Bock *v.* Hoakin (1837), 6 Ad. & El. 495; 2 Nev. & P. (Q. B.) 660 . 18, 54
——— Bennington *v.* Hull (1812), 16 East, 208 15, 63, 93
——— Birmingham Canal Co. *v.* Bold (1847), 11 Q. B. 127; 12 Jur. 350 . . 388
——— Blacksell *v.* Tomkins (1809), 11 East, 185 77, 95

PAGE

Doe d. Bover *v.* Trueman (or Truman) (1831), 1 B. & Ad. 736; 9 L. J. (O. S.) (K. B.) 119 47, 50, 57
——— Burdett *v.* Wrighte (1819), 2 B. & Ald. 710 371
——— Burgess *v.* Thompson (1836), 5 Ad. & El. 532; 1 Nev. & P. (K. B.) 215; 2 Har. & W. 451; 6 L. J. (K. B.) 57 101
——— Burrell *v.* Bellamy (1813), 2 M. & S. 87 102
——— Burrough *v.* Reade (1807), 8 East, 353 77
——— Burrows *v.* Freeman (1844), 12 M. & W. 844; 1 Car. & Kir. 386; 14 L. J. (EX.) 142 95
——— Carlisle (Earl) *v.* Towns (1831), 2 B. & Ad. 585; 9 L. J. (O. S.) (K. B.) 278 67
——— Cawthorn *v.* Mee (1833), 4 B. & Ad. 617; 1 Nev. & M. (K. B.), 424; 2 L. J. (K. B.) 104 17, 63, 95, 101
——— Clayton *v.* Williams (1843), 11 M. & W. 803: 12 L. J. (EX.) 429 . 4, 19
——— Cook *v.* Danvers (1806), 7 East, 299; 3 Smith (K. B.), 291 . . . 67
——— Counsell *v.* Caperton (1839), 9 C. & P. 112 97
——— Dand *v.* Thomson (No. 2) (1849), 13 Q. B. 670; 18 L. J. (Q. B.) 326 . . 76
——— Dormer *v.* Wilson (1821), 4 B. & Ald. 303 92, 95
——— Douglas *v.* Lock (1835), 2 Ad. & El. 705; 4 Nev. & M. (K. B.) 807; 4 L. J. (K. B.) 113 38
——— Edmunds *v.* Llewellin (1835), 2 Cr. M. & R. 503; 1 Gale, 193; 5 Tyr. 899; 5 L. J. (EX.) 84 67
——— Evans *v.* Evans (1826), 5 B. & C. 584; 8 Dow. & Ry. (K. B.) 399; 4 L. J. (O. S.) (K. B.) 322 52, 57, 369
——— Foley *v.* Wilson (1809), 11 East, 56 25, 54
——— Folkes *v.* Clements (1813), 2 M. & S. 68 50
——— Garrod *v.* Olley (1840), 12 Ad. & El. 481; 4 Per. & Dav. 275; 9 L. J. (Q. B.) 379 95
——— Gibbons *v.* Pott (1781), 2 Doug. (K. B.) 709 110, 111
——— Grubb *v.* Burlington (Earl) (1833), 5 B. & Ad. 507; 2 Nev. & M. (K. B.) 534; 3 L. J. (K. B.) 26 48
——— Gutteridge *v.* Sowerby (1860), 7 C. B. (N. S.) 599; 29 L. J. (C. P.) 291; 2 L. T. 150; 6 Jur. (N. S.) 870; 8 W. R. 393 61
——— Hamilton *v.* Clift (1840), 12 Ad. & El. 566; 4 Per. & Dav. 579 . . 87
——— Harman *v.* Morgan (1797), 7 Term Rep. 103 87
——— Hayne *v.* Redfern (1810), 12 East, 96 369
——— Ibbot *v.* Cowling (1794), 6 Term Rep. 63 36, 109
——— Jones *v.* Richards (1798), Peake, Add. Cas. 180 18
——— Leach *v.* Whitaker (1834), 5 B. & Ad. 409; 3 Nev. & M. (K. B.) 225 82, 84
——— Le Keux *v.* Harrison (1844), 6 Q. B. 631; 14 L. J. (Q. B.) 77; 9 Jur. 104 58
——— Lempriere *v.* Martin (1717), 2 Wm. Bl. 1147 75
——— Malden Corporation *v.* Miller (1818), 1 B. & Ald. 699 308
——— Mason *v.* Mason (1770), 3 Wils. (K. B.) 63 10, 86
——— Milner *v.* Brightwen (1809), 10 East, 583 78
——— Molesworth *v.* Sleeman (1846), 9 Q. B. 298; 15 L. J. (Q. B.) 338; 10 Jur. 568 4, 18
——— Nepean *v.* Budden (1822), 5 B. & Ald. 626; 1 Dow. & Ry. (K. B.) 243 . . 100
——— ——— *v.* Goddard (1823), 1 B. & C. 522; 2 Dow. & Ry. (K. B.) 773; 1 L. J. (O. S.) (K. B.) 179 75
——— Nicholson *v.* Welford (1840), 12 Ad. & El. 61; 9 L. J. (Q. B.) 334 . . 68
——— Norfolk (Duke) *v.* Sanders (1783), 3 Dougl. (K. B.) 303 79
——— North *v.* Webber (1837), 5 Scott, 189; 3 Hodg. 203 3, 112
——— Newby *v.* Jackson (1823), 2 Dow. & Ry. (K. B.) 514; 1 B. & C. 448 . 112
——— Padwick *v.* Skinner (1848), 3 Exch. 84; 18 L. J. (EX.) 107 18
——— Parker *v.* Thomas (1842), 3 Man. & G. 815; 4 Scott (N. S.), 449; 91 L. J. (C. P.) 124 77
——— Pennington *v.* Taniere (1848), 12 Q. B. 998; 18 L. J. (Q. B.) 49; 13 Jur. 119 376, 384, 392
——— Phillips *v.* Aldridge (1791), 4 Term Rep. 264 371
——— Priestley *v.* Calloway (1827), 6 B. & C. 484; 9 Dow. & Ry. (K. B.) 518; 5 L. J. (O. S.) (K. B.) 188 17, 95
——— Pring *v.* Pearsey (1827), 7 B. & C. 304; 9 Dow. & Ry. (K. B.) 908 . . 4
——— Rayner *v.* Strickland (1842), 2 Q. B. 792; 2 Gal. & Dav. 278; 11 L. J. (Q. B.) 305 83
——— Reay *v.* Huntington (1803), 4 East, 271 67, 68, 112
——— Riddell *v.* Gwinnell (1841), 1 Q. B. 692; 1 Gal. & Dav. 180; 10 L. J. (Q. B.) 212 10, 78, 86
——— Roberts *v.* Whitaker (1834), 3 Nev. & M. (K. B.) 225 13

PAGE
Doe d. Robinson *v.* Bousfield (1844), 6 Q. B. 492 ; 1 Car. & Kir. 558 ; 14 L. J. (Q. B.) 42 ; 8 Jur. 1121 47
——— Shelton *v.* Shelton (1835), 3 Ad. & El. 265 ; 4 Nev. & M. 857 ; 1 H. & W. 287 ; 4 L. J. (K. B.) 167 96
——— Stilwell *v.* Mellersh (1836), 5 Ad. & El. 540 ; 2 H. & W. 341 ; 1 Nev. & P. 30 62
——— Tarrant *v.* Hellier (1789), 3 Term Rep. 162 27, 51, 52, 55, 58
——— Taylor *v.* Crisp (1838), 8 Ad. & El. 779 ; 1 Per. & Dav. 37 ; 8 L. J. (Q. B.) 41 70, 102
——— Tresidder *v.* Tresidder (1841), 1 Q. B. 416 ; 10 L. J. (Q. B.) 160 ; 1 Gal. & Dav. 70 ; 5 Jur. 931. 47, 53
——— Tunstill v. Bottriell (1833), 5 B. & Ad. 131 ; 2 L. J. (K. B.) 158 . . 70
——— Twining *v.* Muscott (1844), 12 M. & W. 832 ; 14 L. J. (EX.) 185 . 32, 57
——— Vernon *v.* Vernon (1805), 7 East, 8 ; 3 Smith (K. B.). 6 93
——— Warwick *v.* Coombes (1844), 6 Q. B. 535 ; 14 L. J. (Q. B.) 37 ; 8 Jur. 1166 51, 58, 101
——— Welsh *v.* Langfield (1847), 16 M. & W. 497 77
——— Whalhead *v.* Ossingbrooke (1824), 2 Bing. 70 ; 21 L. J. (O. S.) (C. P.) 105 ; 9 Moore (C. P.), 68 9
——— Wheeler *v.* Gibbons (1835), 7 C. & P. 161 94, 98
——— Whitbread *v.* Jenney (1804), 5 East, 522 ; 2 Smith (K. B.), 116 30, 35, 77, 99
——— Whittick *v.* Johnson (1819), 21 R. R. 826 ; Gow, 173 46
——— Wightwick *v.* Truby (1774), 2 Wm. Bl. 944 9, 70
——— Winder *v.* Lawes (1837), 7 L. J. (Q. B.) 97 ; 2 Nev. & P. (K. B.) 195 ; 7 Ad. & El. 195 ; Will. Woll. & Dav. 484 89
Doherty *v.* Thompson (1906), 94 L. T. 626, C. A. 329
Donaldsons *v.* Becket (1774), 4 Burr. 2408 ; 2 Bro. Parl. Cas. 129 . 136, 139, 173
Donington-on-Baine Church Estate (1860), 6 Jur. (N. S.) 290 ; 2 L. T. 10 ; 8 W. R. 201 641, 642
Dormer *v.* Fortescue (1744), 3 Atk. 130. 80
Dormont *v.* Furness Rail. Co. (1883), 11 Q. B. D. 496 ; 47 J. P. 711 ; 52 L. J. (Q. B.) 331 ; 49 L. T. 134 ; 5 Asp M. L. C. 127 390
Dorset County Council *v.* Pethick Bros. (1898), 14 T. L. R. 183, C. A. . . 609
Douglas *v.* Dysart (Lord) (1861), 10 C. B. (N. S.) 688 ; 6 L. T. 327 . . . 31
Dove *v.* Williot (1589), Cro. Eliz. 160 111
Down *v.* Hopkins (1594), 4 Co. Rep. 29 b ; Cro. Eliz. 323 60
Downe (Viscount) *v.* Morris (1844), 3 Hare, 394 ; 13 L. J. (CH.) 337 ; 8 Jur. 486 55
Doyle *v.* Bathe (1871), I. R. 6 C. L. 6 442
Dressman *v.* Harris (1854), 9 Exch. 485 602
Drew *v.* Harlow (1875), 39 J. P. 420 340
Driffield, *Ex parte* (1871), L. R. 7 Q. B. 207 ; 20 W. R. 240 223
Du Bost *v.* Beresford (1810), 2 Camp. 511 191
Duck *v.* Bates (1884), 13 Q. B. D. 843 ; 48 J. P. 501 ; 53 L. J. (Q. B.) 338 ; 50 L. T. 778 ; 32 W. R. 813, C. A. 140, 175
——— *v.* Mayen (1892), 8 T. L. R. 339 182
——— *v.* Tower Galvanizing Co., Ltd., [1901] 2 K. B. 314 ; 70 L. J. (K. B.) 625 ; 84 L. T. 847 361, 363
Dudfeild *v.* Andrews (1689), 1 Salk. 184 90
Duke *v.* Davis, [1893] 2 Q. B. 260 ; 62 L. J. (Q. B.) 549 ; 4 R. 518 ; 69 L. T. 490 ; 41 W. R. 673, C. A. 440, 513
Dummer *v.* Chippenham Corporation (1807), 14 Ves. 245 366, 367
Dunkley *v.* Scribnor (1815), 2 Madd. 443 70
Dunlop Pneumatic Tyre Co., Ltd. *v.* Actien-Gesellschaft für Motor und Motorfahrzeugbau vorm. Cudell & Co., [1902] 1 K. B. 342 ; 7 L. J. (K. B.) 284 ; 86 L. T. 472 ; 18 T. L. R. 229 ; 50 W. R. 226 ; 19 R. P. C. 46, C. A. . . 312
Dunn *v.* Birmingham Canal Co. (1872), L. R. 8 Q. B. 42 ; 42 L. J. (Q. B.) 34 ; 27 L. T. 683 ; 21 W. R. 266 389
——— *v.* Green (1724), 3 P. Wms. 8 111
——— *v.* South Eastern and Chatham Rail Co., [1903] 1 K. B. 358 ; 72 L. J. (K. B.) 127 ; 51 W. R. 427 ; 88 L. T. 60 ; 19 T. L. R. 161 580
Dunstan *v.* Imperial Gas Light and Coke Co. (1831), 1 L. J. (K. B.) 49 ; 3 B. & Ad. 125 336, 380
Dunston *v.* Paterson (1858), 2 C. B. (N. S.) 495 ; 5 C. B. (N. S.) 267 ; 28 L. J. (C. P.) 97 ; 4 Jur. (N. S.) 1024 ; 6 W. R. 768 425, 449
Dupuy *v.* Dilkes (1879), 48 L. J. (CH.) 682 198
Durant *v.* Kennett (1869), L. R. 5 C. P. 262 ; 1 Hop. & Colt. 297 ; 39 L. J. (C. P.) 17 ; 21 L. T. 603 ; 18 W. R. 286 374
Durham (Bishop) *v.* Rippon (1825), 4 L. J. (O. S.) (CH.) 32 47

PAGE
Dutton, *Re*, [1892] 1 Q. B. 486 ; 56 J. P. 455 ; 61 L. J. (Q. B.) 190 ; 66 L. T. 324 ; 40 W. R. 270 261
Dyke *v.* Bath and Wells (Bishop) (1715), 6 Bro. Parl. Cas. 365 3
Dymock *v.* Watkins (1883), 10 Q. B. D. 451 ; 48 L. T. 393 ; 31 W. R. 331, C. A. 533
Dyte *v.* St. Pancras Guardians (1872), 27 L. T. (N. S.) 342 384

E.

EAGLETON *v.* East India Co. (1802), 3 Bos. & P. 55 338
Eardley *v.* Granville (1876), 3 Ch. D. 826 ; 45 L. J. (CH.) 669 ; 34 L. T. 609 ; 24 W. R. 528 22, 24, 25
East *v.* Harding (1596), Cro. Eliz. 498 ; Moore (K. B.), 392 ; Owen, 63 . . 25
East Anglian Rail. Co. *v.* Eastern Counties Rail. Co. (1851), 11 C. B. 775 ; 21 L. J. (C. P.) 23 ; 16 Jur. 249 360, 379
——— *v.* Lythgoe (1851), 10 C. B. 726 ; 2 L. M. & P. 221 ; 20 L. J. (C. P.) 84 ; 15 Jur. 400 603
East Dulwich No. 295 Starr-Bowkett Building Society, *Re* (1890), 39 W. R. 32 610, 611
East Freemantle Corporation *v.* Annois, [1902] A. C. 213 ; 67 J. P. 103 ; 71 L. J. (P. C.) 39 ; 85 L. T. 732 ; 18 R. P. C. 199 389
East Lincolnshire Rail. Co.'s Acts, *Re*, *Ex parte* Canterbury (Archbishop) (1848), 2 De G. & Sm. 365 377
East London Waterworks Co. *v.* Bailey (1827), 4 Bing. 283 ; 12 Moore (C. P.), 533 ; 5 L. J. (O. S.) (C. P.) 175 362, 383
Eastcourt *v.* Weeks (1698), 1 Salk. 186 ; 1 Lat. 799 48, 51
Eastern Archipelago Co. *v.* R. (1853), 2 E. & B. 856 ; 2 C. L. R. 145 ; 23 L. J. (Q. B.) 82 ; 18 Jur. 481 ; 2 W. R. 77 316, 317, 397, 398, 399, 400
Eastern Counties Rail. Co., *Re*, *Ex parte* Sawston (Vicar) (1858), 6 W. R. 492 ; 27 L. J. (CH.) 755 ; 4 Jur. (N. S.) 473 . . 28, 107
——— *v.* Broom (1851), 6 Exch. 314 ; 20 L. J. (EX.) 196 ; 15 Jur. 297 386, 387
——— *v.* Hawkes (1855), 5 H. L. Cas. 331 ; 24 L. J. (CH.) 601 ; 3 W. R. 609 359
Eastern Union Rail. Co. *v.* Hart (1852), 8 Exch. 116 ; 22 L. J. (EX.) 20 ; 17 Jur. 89 379
Eaton *v.* Basker (1881), 7 Q. B. D. 529 ; 45 J. P. 616 ; 50 L. J. (Q. B.) 444 ; 44 L. T. 703 ; 29 W. R. 597, C. A. 379
——— *v.* Lake (1888), 20 Q. B. D. 378 ; 57 L. J. (Q. B.) 227 ; 59 L. T. 100 ; 36 W. R. 277, C. A. 159, 176, 181, 182
——— *v.* Tapley, [1899] 1 Q. B. 953 ; 68 L. J. (Q. B.) 638 ; 47 W. R. 463 . . 486
Ebbw Vale Co.'s Claim, *Re* Contract Corporation. *See* Contract Corporation, *Re*, Ebbw Vale Co's. Claim.
Eccles *v.* Wirral Sanitary Authority (1886), 17 Q. B. D. 107 ; 50 J. P. 596 ; 55 L. J. (M. C.) 106 ; 34 W. R. 412 678
Ecclesiastical Commissioners *v.* London and South Western Rail. Co. (1854), 14 C. B. 743 ; 23 L. J. (C. P.) 177 ; 2 C. L. R. 1797 ; 18 Jur. 911 ; 2 W. R. 560 30, 105
Ecclesiastical Commissioners for England *v.* Parr, [1894] 2 Q. B. 420 ; 63 L. J. (Q. B.) 784 ; 71 L. T. 65 ; 42 W. R. 561, C. A. 3, 58, 61, 101
Ecclesiastical Commissioners of England and Wales *v.* Rowe (1880), 5 App. Cas. 736 ; 45 J. P. 36 ; 49 L. J. (Q. B.) 771 ; 43 L. T. 353 ; 29 W. R. 159 . . 357
Eddleston *v.* Collins (1852), 10 Hare, 99 ; 3 De G. M. & G. 1 ; 16 Jur. 790 . 62
Edevain *v.* Cohen (1889), 41 Ch. D. 566 168
Edinburgh, Perth and Dundee Rail. Co. *v.* Philip (1857), 2 Macq. 514 ; 3 Jur. (N. S.) 249 ; 5 W. R. 377 360
Edison and Swan United Electric Light Co. *v.* Holland (1889), 41 Ch. D. 28 ; 58 L. J. (CH.) 524 ; 61 L. T. 32 ; 37 W. R. 699, C. A. 591
Edmondson *v.* Harrison (1896), 41 Sol. Jo. 218 556
Edmund *v.* Martell (1907), 24 T. L. R. 25, C. A. 579
Edmunds *v.* Brown (1665), 1 Lev. 237 401
Edwardes *v.* Cotton (1903), 19 T. L. R. 34 179, 181, 182
Edwards, *Ex parte*, R. *v.* Philbrick. *See* R. *v.* Philbrick, *Ex parte* Edwards.
——— *v.* Champion (1853), 3 De G. M. & G. 202 ; 23 L. J. (CH.) 123 ; 1 W. R. 497 92
——— *v.* Edwards (1836), 2 Y. & C. (EX.) 123 ; 6 L. J. (EX. EQ.) 79 . . . 74

PAGE
Edwards *v.* Grand Junction Rail. Co. (1836), 1 My. & Cr. 650; 7 Sim. 337; 6 L. J. (CH.) 47 385
——— *v.* Hammond (1683), 3 Lev. 132 91
——— *v.* London and North Western Rail. Co. (1870), L. R. 5 C. P. 445; 39 L. J. (C. P.) 241; 22 L. T. 656; 18 W. R. 834 387
——— *v.* Midland Rail. Co. (1880), 6 Q. B. D. 287; 45 J. P. 374; 50 L. J. (Q. B.) 281; 43 L. T. 694; 29 W. R. 609 387, 388
——— *v.* Moseley (1740), Willes, 192. 37, 38
Egleton's Case, 2 Roll. Abr. 40 80
Ellis *v.* Marshall & Son (1895), 64 L. J. (Q. B.) 757 194
—— *v.* Peachy (1849), 18 L. J. (Q. B.) 137; 5 Dow. & L. 675; 13 Jur. 564 . 437
Elms *v.* Hedges (1906), 95 L. T. 145; 22 T. L. R. 574 578
Elston *v.* Rose (1868), L. R. 4 Q. B. 4; 3 B. & S. 509; 38 L. J. (Q. B.) 6; 19 L. T. 280; 17 W. R. 52 436, 612
——— *v.* Wood (1833), 2 My. & K. 678 15
Elve *v.* Boughton, [1891] 1 Ch. 501; 60 L. J. (CH.) 383; 64 L. T. 482, C. A. . 316
Elwood *v.* Bullock (1844), 6 Q. B. 383; 13 L. J. (Q. B.) 330; 8 Jur. 1044 . 336, 337
Ely (Bishop) *v.* Bentley (1732), 2 Bro. Parl. Cas. 220 334
—— (Dean) *v.* Caldecot (1832), 8 Bing. 439; 1 L. J. (C. P.) 131; 1 Moo. & S. 633 34
——— *v.* Warren (1741), 2 Atk. 189 10
Emery *v.* Barnett (1858), 4 C. B. (N. S.) 423; 27 L. J. (C. P.) 216; 4 Jur. (N. S.) 634; 6 W. R. 634 430, 437
Empire Type Setting Co. of New York *v.* Linotype Co. (1898), 79 L. T. 8; 14 T. L. R. 511, C. A. 390
Emson *v.* Williamson (1598), 1 Roll. Abr. 933 113
English and Colonial Produce Co., Ltd., *Re*, [1906] 2 Ch. 435; 75 L. J. (CH.) 831; 95 L. T. 85; 22 T. L. R. 669; 13 Mans. 337 379
Erichsen *v.* Last (1881), 8 Q. B. D. 414; 46 J. P. 357; 51 L. J. (Q. B.) 86; 45 L. T. 703; 30 W. R. 301, C. A. 312
Erish *v.* Rives (1599), Cro. Eliz. 717 62
Ernest *v.* Loma Gold Mines, Ltd., [1897] 1 Ch. 1; 66 L. J. (CH.) 17; 75 L. T. 317; 45 W. R. 86, C. A. 349, 350
——— *v.* Nicholls (1857), 6 H. L. Cas. 404; 3 Jur. (N. S.) 919; 6 W. R. 24 . 361
Esam *v.* A.-G., *Re* Wilkinson. *See* Wilkinson, *Re*, Esam *v.* A.-G.
Espuela Land and Cattle Co., *Re* (1900), 48 W. R. 684 343
Eton College Case (1557), Jenk., case 54 308
European Society Arbitration Acts, *Re*, *Ex parte* British National Life Assurance Association (Liquidators) (1878), 8 Ch. D. 679; 48 L. J. (CH.) 118; 39 L. T. 136; 27 W. R. 88 364
Evans *v.* Brown (1842), 5 Beav. 114; 11 L. J. (CH.) 349; 6 Jur. 380 . . . 56
——— *v.* Liverpool Corporation, [1906] 1 K. B. 160; 69 J. P. 263; 74 L. J. (K. B.) 742; 21 T. L. R. 558; 3 L. G. R. 868 388
——— *v.* Manchester, Sheffield and Lincolnshire Rail. Co. (1887), 36 Ch. D. 626; 57 L. J. (CH.) 153; 57 L. T. 194; 36 W. R. 328 . . . 389, 390
——— *v.* Nicholson (1875), 32 L. T. 778 451
——— *v.* Rees (1839), 10 Ad. & El. 151; 2 Per. & Dav. 626; 9 L. J. (M. C.) 83 18
——— *v.* Upsher (1847), 16 M. & W. 675; 16 L. J. (EX.) 185 64
——— *v.* Wills (1876), 1 C. P. D. 229; 45 L. J. (C. P.) 420; 34 L. T. 679; 24 W. R. 883. 613
Evelyn *v.* Lewis (1844), 3 Hare, 472 57
Everall *v.* Brown, [1905] 2 K. B. 196; 74 L. J. (K. B.) 708; 93 L. T. 199; 53 W. R. 664; 21 T. L. R. 538, [1906] 2 K. B. 884; 75 L. J. (K. B.) 960; 95 L. T. 231; 22 T. L. R. 767, C. A. 587
Everest *v.* Glyn (1815), 6 Taunt. 425; 2 Marsh. 84; Holt (N. P.), 1 . . 10, 63
Everingham *v.* Ivatt (1873), L. R. 8 Q. B. 388; 42 L. J. (Q. B.) 203; 28 L. T. 672; 21 W. R. 592, C. A. 57
Ewer *v.* Astwike (1589), 1 And. 192 78
Exchange Telegraph Co., Ltd. *v.* Central News, [1897] 2 Ch. 48; 66 L. J. (CH.) 672; 76 L. T. 591; 45 W. R. 595 . . . 136, 137, 139
——— *v.* Gregory & Co., [1896] 1 Q. B. 147; 60 J. P. 52; 65 L. J. (Q. B.) 262; 74 L. T. 83, C. A. 136, 137, 145, 163
——— *v.* Howard and London and Manchester Press Agency (1906), 22 T. L. R. 375 136, 137, 147
Exeter and Crediton Rail. Co. *v.* Buller (1847), 5 Ry. & Can. Cas. 211; 16 L. J. (CH.) 449; 11 Jur. 527 345
Eyre *v.* Carnan (1781), 6 Bac. Abr. 509 173

F.

PAGE
FAIRCLOUGH *v.* Manchester Ship Canal Co., [1897] W. N. 7, C. A. . . 596, 554
Falcke *v.* Scottish Imperial Insurance Co. (1886), 34 Ch. D. 234 ; 56 L. J. (CH.) 707 ; 56 L. T. 220 ; 35 W. R. 143, C. A. 379
Faris, *Ex parte, Re* British Sugar Refining Co. *See* British Sugar Refining Co., *Re, Ex parte* Faris.
Farquharson *v.* Morgan, [1894] 1 Q. B. 552 ; 58 J. P. 495 ; 63 L. J. (Q. B.) 474 ; 9 R. 202 ; 70 L. T. 152 ; 42 W. R. 306, C. A. 612
Farrer *v.* Lowe (1889), 53 J. P. 183 442
Faversham Free Fishermen (Company or Fraternity), *Re* (1887), 36 Ch. D. 329 ; 57 L. J. (CH.) 187 ; 57 L. T. 577, C. A. 321
Faviell *v.* Eastern Counties Rail. Co. (1848), 2 Exch. 344 ; 6 Dow. & L. 54 ; 17 L. J. (EX.) 223 382
Fawcet *v.* Lowther (1757), 2 Ves. Sen. 300 29, 68, 94
Fawlkner *v.* Fawlkner (1681), 1 Vern. 21 ; Eq. Cas. Abr. 119 25
Fearon *v.* Nowall (1848), 17 L. J. (Q. B.) 161 ; 5 Dow. & L. 439 ; 18 L. J. (Q. B.) 9 437
Febart *v.* Stevens (1860), 30 L. J. (EX.) 1 483
Felton *v.* Bower & Co., [1900] 1 Q. B. 598 ; 69 L. J. (Q. B.) 351 ; 82 L. T. 419 ; 48 W. R. 349 449
Fenwick, Stobart & Co., *Re*, Deep Sea Fishery Co.'s, Ltd., Claim, [1902] 1 Ch. 507 ; 71 L. J. (CH.) 321 ; 86 L. T. 193 ; 9 Mans. 205 329
Fernes' (Dean and Chapter) Case (1607), Dav. Ir. 116 344
Ferrer *v.* Johnson (1594), Cro. Eliz. 336 61
Filburn *v.* People's Palace and Aquarium Co. (1890), 25 Q. B. D. 258 ; 55 J. P. 181 ; 59 L. J. (Q. B.) 471 ; 38 W. R. 706, C. A. 387
Filewood *v.* Palmer (1729), 5 Vin. Abr. 8, S. 24
Finch *v.* Ely (Bishop) (1828), 8 B. & C. 112 ; 2 Man. & Ry. (K. B.) 127 ; 6 L. J. (O. S.) (K. B.) 223 323
Finch's (Sir Moyle) Case (1606), 6 Co. Rep. 63 a ; 2 Leon. 134 20
Finlay *v.* Bristol and Exeter Rail. Co. (1852), 7 Exch. 409 ; 21 L. J. (EX.) 117 ; 7 Ry. & Can. Cas. 449 384, 392
Fisher *v.* Magnay (1843), 5 Man. & G. 778 ; 6 Scott (N. R.), 588 ; 1 Dow. & L. 40 ; 12 L. J. (C. P.) 276 425
Fishmongers' Co. *v.* Robertson (1843), 6 Scott (N. R.), 56 ; 5 Man. & G. 131 ; 12 L. J. (C. P.) 185 383
Fitch *v.* Stuckley (1594), 4 Co. Rep. 23 a 77
FitzJames *v.* Moys (1663), 1 Sid. 133 265
Flack *v.* Downing College, Cambridge (Master) (1853), 22 L. J. (C. P.) 229 ; 13 C. B. 945 ; 1 C. L. R. 692 ; 17 W. R. 453 ; 17 Jur. 697 81, 91
Fletcher *v.* Baker (1874), 43 L. J. (Q. B.) 112 ; L. R. 9 Q. B. 370 ; 30 L. T. 675 ; 22 W. R. 646 521
Flitters *v.* Allfrey (1874), L. R. 10 C. P. 29 ; 44 L. J. (C. P.) 10, n. ; 31 L. T. 881 490, 534
Floyd *v.* Barker (1608), 12 Co. Rep. 23 256
Foljambe *v.* Smith's Tadcaster Brewery Co. (1904), 73 L. J. (CH.) 722 ; 91 L. T. 312 11, 46
Folkard *v.* Hemet (1776), 2 Wm. Bl. 1061 16
Ford *v.* Harington (1869), L. R. 5 C. P. 282 ; 39 L. J. (C. P.) 107 ; 21 L. T. 609 ; 18 W. R. 289 ; 1 Hop. & Colt. 331 322, 374
——— *v.* Taylor (1877), 3 C. P. D. 21 ; 47 L. J. (C. P.) 116 ; 37 L. T. 431 ; 26 W. R. 170 521, 548
Forder *v.* Wade (1794), 4 Bro. C. C. 521 80
Fores *v.* Johnes (1802), 4 Esp. 97 191, 201
Forrest *v.* Manchester, Sheffield, and Lincolnshire Rail. Co. (1861), 4 De G. F. & J. 126 394
Fortescue *v.* Paton (1860), 3 L. T. 268 615
Foss *v.* Harbottle (1843), 2 Hare, 461 ; 7 Jur. 163 303, 334, 347, 394
Foster *v.* Green (1861), 6 H. & N. 793 ; 31 L. J. (EX.) 263 606
——— *v.* Reeves, [1892] 2 Q. B. 255 ; 61 L. J. (Q. B.) 763 ; 67 L. T. 537 ; 57 J. P. 23 ; 40 W. R. 695, C. A. 432, 445
——— *v.* Temple (1848), 5 Dow. & L. 655 ; 17 L. J. (Q. B.) 230 ; 12 Jur. 654 613
——— *v.* Usherwood (1878), 3 Ex. D. 1 ; 47 L. J. (EX.) 30 ; 37 L. T. 389 ; 26 W. R. 94, C. A. 439
Foulger *v.* Taylor (1860), 5 H. & N. 202 ; 29 L. J. (EX.) 154 ; 1 L. T. 481 ; 8 W. R. 279. 564

PAGE
Fountaine *v.* Carmarthen Rail. Co. (1868), L. R. 5 Eq. 316 ; 37 L. J. (CH.) 429 ; 16 W. R. 476 361
Fournet *v.* Pearson, Ltd. (1897), 14 T. L. R. 82, C. A. 143
Fowler *v.* Monmouthshire Canal Co. (1879), 4 Q. B. D. 334 ; 48 L. J. (Q. B.) 457 ; 41 L. T. 159 ; 27 W. R. 659 584
Fox *v. Star* Newspaper Co., [1900] A. C. 19 ; 69 L. J. (Q. B.) 117 ; 81 L. T. 562 ; 16 T. L. R. 97 ; 48 W. R. 321 538
Foxhall *v.* Barnett (1853), 2 E. & B. 928 ; 23 L. J. (Q. B.) 7 ; 2 C. L. R. 273 ; 18 Jur. 41 ; 2 W. R. 61 256, 284
Foxley's Case (1601), 5 Co. Rep. 109 a ; Moore (K. B.), 572 ; Cro. Eliz. 693 . 5
France *v.* Dutton, [1891], 2 Q. B. 208 ; 60 L. J. (Q. B.) 488 ; 64 L. T. 793 ; 39 W. R. 716 584
Francis, *Ex parte* (No. 1), [1903] 1 K. B. 275 ; 67 J. P. 153 ; 72 L. J. (K. B.) 120 ; 51 W. R. 267 ; 88 L. T. 176 ; 19 T. L. R. 146 ; 20 Cox, C. C. 381 170
——— *Ex parte* (No. 2) (1903), 88 L. T. 806 170
——— *v.* Dowdeswell (1874), L. R. 9 C. P. 423 ; 43 L. J. (C. P.) 248 ; 30 L. T. 607 ; 22 W. R. 755 605
Fraser *v.* Mason (1883), 11 Q. B. D. 574 ; 52 L. J. (Q. B.) 643 ; 49 L. T. 761 ; 32 W. R. 421, C. A. 31, 32, 35
Fray *v.* Blackburn (1863), 3 B. & S. 576 415
French *v.* Day (1893), 9 T. L. R. 548 185
French's Case (1576), 4 Co. Rep. 31 a 84, 85
Frend *v.* Dennett (1858), 4 C. B. (N. S.) 576 ; 27 L. J. (C. P.) 314 ; 4 Jur. (N. S.) 897 ; 5 L. T. 73 379
Frosel *v.* Welsh (1616), Cro. Jac. 403 93
Frost and Reed *v.* Olive Series Publishing Co. (1908), 24 T. L. R. 649 . . 196
Fuller, *Re* (1853), 2 E. & B. 573 ; 1 C. L. R. 1021 ; 22 L. J. (Q. B.) 415 ; 17 Jur. 989 ; 1 W. R. 447 452
——— *v.* Blackpool Winter Gardens and Pavilion Co., [1895] 2 Q. B. 429 ; 73 L. T. 242, C. A. 177, 178, 183
——— & Co. *v.* Alexander Brothers (1882), 52 L. J. (Q. B.) 103 ; 47 L. T. 443 . 489
Fulmerston *v.* Steward (1555) (1554), 1 Plowd. 102 ; 2 Dyer, 102 ; Poph. 173 . 305, 306, 374
Fulwood's Case (1591), 4 Co. Rep. 64 b 305, 371, 377
Furber *v.* Sturmey (1858), 3 H. & N. 521 ; 27 L. J. (EX.) 453 ; 4 Jur. (N. S.) 956 615
——— *v.* Taylor, [1900] 2 Q. B. 719 ; 69 L. J. (Q. B.) 898 ; 48 W. R. 689 ; 83 L. T. 308, C. A. 600

G.

GAGE *v.* Collins (1867) L. R. 2 C. P. 381 ; 36 L. J. (C. P.) 144 ; 15 W. R. 568 . 609
Galbraith *v.* Poynton, [1905] 2 K. B. 258 ; 74 L. J. (K. B.) 649 48
Gale *v.* Leckie (1817), 2 Stark. 107 148
—— *v.* Noble (1697), Carth. 432 67
Gallard *v.* Hawkins (1884), 27 Ch. D. 298 ; 53 L. J. (CH.) 834 ; 51 L. T. 689 ; 33 W. R. 31 55
Galloway *v.* London Corporation (1866), L. R. 1 H. L. 34 ; 35 L. J. (CH.) 477 ; 12 Jur. (N. S.) 747 ; 14 L. T. 865 372
Gallsworthy *v.* Selby Dam Drainage Commissioners, [1892] 1 Q. B. 348 ; 61 L. J. (Q. B.) 372 ; 66 L. T. 17 ; 56 J. P. 356 ; 8 T. L. R. 198, C. A. . . . 358
Gambart *v.* Ball (1863), 14 C. B. (N. S.) 306 ; 32 L. J. (C. P.) 166 ; 9 Jur. (N. S.) 1059 ; 8 L. T. 426 ; 11 W. R. 699 196, 204
——— *v.* Summer (1859), 5 H. & N. 5 ; 29 L. J. (EX.) 98 ; 5 Jur. (N. S.) 1109 ; 8 W. R. 27 204
Garbutt *v.* Trevor (1863), 15 C. B. (N. S.) 550 ; 1 H. & R. 69 ; 33 L. J. (C. P.) 73 ; 10 Jur. (N. S.) 131 ; 12 W. R. 471 67
Gardiner *v.* Childs (1837) 8 C. & P. 345 ; 2 Jur. 233 162
Garland *v.* Alston (1858), 3 H. & N. 390 ; 27 L. J. (EX.) 438 ; 4 Jur. (N.S.) 539 ; 6 W. R. 492 28, 34, 37
——— *v.* Jekyll (1824) 2 Bing. 273 ; 9 Moore (C. P.), 502 ; 2 L. J. (O. S.) (C. P.) 227 ; 27 R. R. 630 34, 37, 43
——— *v.* Mead (1871), L. R. 6 Q. B. 441 ; 40 L. J. (Q. B.) 179 ; 24 L. T. 421 ; 19 W. R. 1156 57, 109
Garner *v.* Garner (1860), 3 L. T. 396 ; (1862) 7 L. T. 182 15
Garnett *v.* Ferrand (1827), 6 B. & C. 611 ; 9 Dow. & Ry. (K. B.) 657 ; 5 L. J. (O. S.) (K. B.) 221 211, 256, 258, 268, 280

PAGE
Garrick *v.* Camden (Earl) (1790), 2 Cox, Eq. Cas. 231 26
Gaskell and Walter's Contract, *Re*, [1906] 2 Ch. 1 ; 75 L. J. (CH.) 503 ; 94 L. T. 658 ; 22 T. L. R. 464, C. A. 73
Gas Light and Coke Co. *v.* St. Mary Abbott's Kensington (Vestry) (1885), 15 Q. B. D. 1 ; 49 J. P. 469 ; 54 L. J. (Q. B.) 414 ; 53 L. T. 457 ; 33 W. R. 892, C. A. 389
Gay *v.* Kay (1599), Cro. Eliz. 661 12
Geddis *v.* Bann Reservoir (Proprietors) (1878), 3 App. Cas. 430 389
Gee *v.* Metropolitan Rail. Co. (1873), L. R. 8 Q. B. 161 ; 42 L. J. (Q. B.) 105 ; 28 L. T. 282 ; 21 W. R. 584 538
—— *v.* Pritchard (1818), 2 Swan. 402 138
Geissendörfer *v.* Mendelssohn (1896), 13 T. L. R. 91 192, 193
General Auction, Estate and Monetary Co. *v.* Smith, [1891] 3 Ch. 432 ; 60 L. J. (CH.) 723 ; 65 L. T. 188 ; 40 W. R. 106 363
General Estates Co., *Re ; Ex parte* City Bank (1868), 3 Ch. App. 758 ; 18 L. T. 894 ; 16 W. R. 919 362
Gentel *v.* Rapps, [1902] 1 K. B. 160 ; 66 J. P. 117 ; 7 L. J. (K. B.) 105 ; 85 L. T. 683 ; 18 T. L. R. 72 ; 20 Cox, C. C. 104 ; 50 W. R. 216 338
Geoghegan *v.* Keegan (1876), 11 I. R. C. L. 129 442
George and Thornbury *v.* Jew (1764), Amb. 627 92
Gerard's (Lord) Case (1615), Godb. 265 31
German Date Coffee Co., *Re* (1882), 20 Ch. D. 169 ; 51 L. J. (CH.) 564 ; 46 L. T. 327 ; 30 W. R. 717, C. A. 360
Gibbons *v.* Snape (1863), 1 De G. J. & Sm. 621 ; 2 New Rep. 563 ; 33 L. J. (CH.) 103 ; 9 Jur. (N. S.) 1096 ; 9 L. T. 132 ; 11 W. R. 1087, C. A. . . . 72
Gibraltar Sanitary Commissioners *v.* Orifila (1890), 15 App. Cas. 400 ; 59 L. J. (P. C.) 95 ; 63 L. T. 58 390
Gilbert *v.* Star Newspaper Co. (1895), 11 T. L. R. 4 136, 137
—— *v.* Trinity House Corporation (1886), 17 Q. B. D. 795 ; 56 L. J. (Q. B.) 85 ; 35 W. R. 30 389
Giles *v.* Taff Vale Rail. Co. (1853), 2 E. & B. 822 386, 388
Gilson & Sons *v.* Kilmer (1893), 69 L. T. 310 602
Ginner *v.* King (1890), 34 Sol. Jo. 294 439
Glass *v.* Richardson (1852), 9 Hare, 698 ; affirmed (1852), 2 De G. M. & G. 658 ; 22 L. J. (CH.) 105 ; 17 Jur. 926 109
Gleaves *v.* Parfitt (1860), 7 C. B. (N. S.) 838 ; 29 L. J. (C. P.) 216 ; 6 Jur. (N. S.) 805 306, 377
Glossop *v.* Heston and Isleworth Local Board (1879), 12 Ch. D. 102 ; 49 L. J. (CH.) 89 ; 40 L. T. 736 ; 28 W. R. 111, C. A. 390, 433
Gloucester Corporation *v.* Wood (1843), 3 Hare, 131 ; 7 Jur. 1125 366
Gloucester County Bank *v.* Rudry Merthyr Steam and House Coal Colliery Co., [1895] 1 Ch. 629 ; 64 L. J. (CH.) 451 ; 72 L. T. 375 ; 43 W. R. 486 ; 2 Mans. 223 ; 12 R. 183, C. A. 310, 345, 361, 363
Godfrey's Trusts, *Re* (1883), 23 Ch. D. 205 ; 52 L. J. (CH.) 479 ; 48 L. T. 389 ; 31 W. R. 426 55, 88
Godmanchester Corporation *v.* Phillips (1836), 4 Ad. & El. 550 ; 6 Nev. & M. 211 ; 1 H. & W. 686 ; 5 L. J. (K. B.) 108 342
Godolphin (Earl) *v.* Penneck (1754), 2 Ves. Sen. 271 67
Godwin *v.* Winsmore (1742), 2 Atk. 526 80
Goerz & Co. *v.* Bell, [1904] 2 K. B. 136 ; 73 L. J. (K. B.) 448 ; 90 L. T. 675 ; 20 T. L. R. 348 ; 53 W. R. 64 312
Goff *v.* Great Northern Rail. Co. (1861), 3 E. & E. 672 ; 30 L. J. (Q. B.) 148 ; 7 Jur. (N. S.) 286 ; 3 L. T. 850 387
Gold *v.* Turner (1874), L. R. 10 C. P. 149 ; 23 W. R. 732 451
Goldberg & Son, Ltd. *v.* Liverpool Corporation (1900), 82 L. T. 362 ; 16 T. L. R. 320, C. A. 389
Golding *v.* Order of La Sainte Union des Sacrees Cœurs (1892), 67 L. T. 605 ; 4 R. 93, C. A. 395
Gollancz *v.* Dent (1903), 88 L. T. 358 148, 159
Gomersall *v.* Medgate (1611), Yelv. 124 ; Cro. Jac. 255 ; 1 Bulst. 52 14
Gonty and Manchester, Sheffield and Lincolnshire Rail., *Re*, [1896] 2 Q. B. 439 ; 65 L. J. (Q. B.) 625 ; 75 L. T. 239 ; 45 W. R. 83, C. A. 376
Goodes *v.* Cluff (1884), 13 Q. B. D. 694 604
Goodey *v.* Colchester etc. Rail. Co. (1852), 17 Beav. 132 385
Goodman *v.* Moses (1900), 69 L. J. (Q. B.) 823 ; 83 L. T. 46 ; 48 W. R. 689 ; 16 T. L. R. 534, C. A. 609
Goodtitle d. Faulkner *v.* Morse (1789), 3 Term Rep. 365 95
Gooles *v.* Grane (1593), Moore (K. B.), 597 96

PAGE
Gorslett *v.* Harris (1857), 29 L. T. (O. S.) 75 449
Gosling *v.* Veley (1847), 7 Q. B. 406 ; 12 L. J. (Q. B.) 201 ; 11 Jur. 385 . 345, 346, 353
——— *v.* ——— (1850), 12 Q. B. 328 ; 19 L. J. (Q. B.) 111, Ex. Ch. ; 14 Jur. 406 335, 346
Goubaud *v.* Wallace (1877), 36 L. T. 704 ; 25 W. R. 604 152
Gozna *v.* Grantham Corporation (1827), 3 Russ. 261 366, 376
Grace *v.* Newman (1875), L. R. 19 Eq. 623 ; 44 L. J. (CH.) 298 ; 23 W. R. 517 . 146, 155, 158, 198, 206
Grafton (Duke) *v.* Horton (1726), 2 Bro. Parl. Cas. 284 74
——— *v.* Clinton (Lord) (1899), 81 L. T. 717 676
——— *v.* Jackson (1845), 6 Q. B. 811 ; 14 L. J. (Q. B.) 129 ; 9 Jur. 275 . . 67
——— *v.* Lewis (1889), 22 Q. B. D. 1 ; 53 J. P. 116 ; 58 L. J. (Q. B.) 117 ; 37 W. R. 73, C. A. 450
——— *v.* Sime (1801), 1 East, 632 28
Gramophone and Typewriter, Ltd. *v.* Stanley, [1906] 2 K. B. 856 ; 75 L. J. (K. B.) 1031 ; 95 L. T. 461 ; 22 T. L. R. 818 312
Grand Junction Canal Co. *v.* Dimes (1846), 15 Sim. 402 ; 17 L. J. (CH.) 206 ; 12 Jur. 886 373
Grant *v.* Astle (1781), 2 Doug. (K. B.) 722 30, 32
———, Bulcraig & Co., *Re*, [1906] 1 Ch. 124 ; 75 L. J. (CH.) 106 ; 93 L. T. 760 ; 22 T. L. R. 96 ; 54 W. R. 165 598
Grant Richards, *Re*, *Ex parte* Warwick Deeping, [1907] 2 K. B. 33 ; 76 L. J. (K. B.) 643 ; 96 L. T. 712 ; 23 T. L. R. 388 ; 14 Mans. 88 158
Granville & Co. v. Firth (1903), 72 L. J. (K. B.) 152 ; 88 L. T. 9 ; 19 T. L. R. 213, C. A. 578
Grattan *v.* Lendrick (1829), 2 Hud. & B. 409 352, 356
Gravenor *v.* Brook (1593), Poph. 35 ; 4 Co. Rep. 23 a 75
Graves *v.* Ashford (1867), L. R. 2 C. P. 410 ; 36 L. J. (C. P.) 139 ; 16 L. T. 98 ; 15 W. R. 498 202, 204
——— *v.* Colby (1838), 9 Ad. & El. 356 ; 1 Per. & Dav. 235 ; 1 Will. Woll. & H. 705 ; 8 L. J. (Q. B.) 57 339
——— *v.* Mercer (1868), 16 W. R. 790 206
——— & Co., Ltd. *v.* Gorrie, [1903] A. C. 496 ; 72 L. J. (P. C.) 95 ; 89 L. T. 111 ; 19 T. L. R. 652 ; 52 W. R. 113 189, 192, 261
Graves' Case (1869), L. R. 4 Q. B. 715 ; 20 L. T. 877 ; 17 W. R. 1018 . 153, 156, 195
Gray *v.* Lewis (1869), L. R. 8 Eq. 531 ; 20 L. T. 282 ; 17 W. R. 431 . . . 309
Great Eastern Rail. Co. *v.* Turner (1872), 8 Ch. App. 149 ; 42 L. J. (CH.) 83 ; 27 L. T. 697 ; 21 W. R. 163 364
Great North-West Central Rail. *v.* Charlebois, [1899] A. C. 114 ; 68 L. J. (P. C.) 25 ; 79 L. T. 35 359
Great Northern Rail. Co. *v.* Mossop (1856), 17 C. B. 130 ; 25 L. J. (C. P.) 22 ; 2 Jur. (N. S.) 21 ; 4 W. R. 116 548
——— *v.* Rimell (1856), 18 C. B. 575 ; *sub nom.* Great Western Rail. Co. *v.* Rimell, 27 L. J. (C. P.) 201 603
Great Northern Rail. Co. and Great Central Rail. Co., *Re* (1908), 24 T. L. R. 417 ; 52 Sol. Jo. 318, C. A. 359, 364
Great Western Rail. *v.* Phillips & Co., Ltd., [1908] A. C. 101 ; 77 L. J. (K. B.) 306 ; 98 L. T. 319 ; 24 T. L. R. 293 428
Green *v.* Beach (1873), L. R. 8 Exch. 208 ; 42 L. J. (EX.) 151 ; 21 W. R. 850 . 451
——— d. Crew *v.* King (1777), 2 Wm. Bl. 1211 91
——— *v.* London General Omnibus Co. (1859), 7 C. B. (N. S.) 290 ; 29 L. J. (C. P.) 13 ; 6 Jur. (N. S.) 228 ; 1 L. T. 95 ; 8 W. R. 88 . . 386, 387
——— *v.* Paterson (1886), 32 Ch. D. 95 ; 56 L. J. (CH.) 181 ; 54 L. T. 738 ; 34 W. R. 724, C. A. 72
——— and Haydon *v.* Chelsea Waterworks Co. (1894), 10 T. L. R. 259, C. A. . 389
Greenwich Hospital Commissioners *v.* Blackett (1848), 12 Jur. 151 22
Greenwich Pier Co. *v.* Thames Conservators (1905), 21 T. L. R. 669 . . . 364
Grey *v.* Lewis (1873), 8 Ch. App. 1035 ; 29 L. T. 199 ; 21 W. R. 928 . . . 394
——— *v.* Northumberland (Duke) (1806), 13 Ves. 236 23
Greymouth Point Elizabeth Rail. and Coal Co., Ltd., *Re*, Yuill *v.* Greymouth Point Elizabeth Rail. and Coal Co., Ltd., [1904] 1 Ch. 32 ; 73 L. J. (CH.) 92 ; 11 Mans. 85 344
Grierson *v.* Jackson (1794), Ridg. L. & S. 304 173
Griffith *v.* Tower Publishing Co., Ltd. and Moncrieff, [1897] 1 Ch. 21 ; 66 L. J. (CH.) 12 ; 75 L. T. 330 ; 45 W. R. 73 161, 162
Griggs (Maynard) *v.* Gibson (1866), 14 W. R. 819 116
Grimbley *v.* Aykroyd, *Re* Aykroyd. *See* Aykroyd, *Re*, Grimbley *v.* Aykroyd.
Growcock *v.* Smith (1794), 2 Cox, Eq. Cas. 397 70

PAGE
Guilford *v.* Lambeth, [1894] 2 Q. B. 832; [1895] 1 Q. B. 92; 64 L. J. (Q. B.) 95; 71 L. T. 738; 43 W. R. 97, C. A. 439
Guyot *v.* Thomson, [1894] 3 Ch. 388; 64 L. J. (CH.) 32; 8 R. 814, n.; 71 L. T. 416, C. A. 161
Gwendolen Freehold Land Society *v.* Wicks, [1904] 2 K. B. 622; 73 L. J. (K. B.) 815; 91 L. T. 440; 10 T. L. R. 593; 53 W. R. 219 657
Gwydir (Lord), *Ex parte* (1819), 4 Madd. 281 369
Gwynne *v.* Knight, *Re* Knight. *See* Knight, *Re*, Gwynne *v.* Knight.
Gybson *v.* Searl (1608), Cro. Jac. 176 65
Gyles *v.* Wilcox (1740), 2 Atk. 143 146, 147
Gyppen *v.* Bunney (1596), Cro. Eliz. 504; Moore (K. B.), 465; Gouldsb. 95 . 96

H.

HACKING *v.* Lee (1860), 2 E. & E. 906; 29 L. J. (Q. B.) 204; 6 Jur. (N. S.) 952; 8 W. R. 495 617
Haddock's Case (1681), T. Raym. 435 320
Haddon *v.* Arrowsmith (1596), Cro. Jac. Eliz. 461; Owen, 72; Poph. 105 . 53, 54
Hadleigh Castle Gold Mines, Ltd., *Re*, [1900] 2 Ch. 419; 69 L. J. (CH.) 631; 83 L. T. 400; 16 T. L. R. 468 347
Haggin *v.* Comptoir d'Escompte de Paris (1889), 23 Q. B. D. 519; 58 L. J. (Q. B.) 508; 61 L. T. 748; 37 W. R. 703, C. A. 395
Haigh *v.* North Brierley Union Guardians (1858), E. B. & E. 873; 28 L. J. (Q. B.) 62; 5 Jur. (N. S.) 511; 6 W. R. 679 384
Hall *v.* Bromley (1887), 35 Ch. D. 642; 56 L. J. (CH.) 722; 56 L. T. 683; 35 W. R. 659, C. A. 28, 37, 107
—— *v.* Byron (1877), 4 Ch. D. 667; 46 L. J. (CH.) 297; 36 L. T. 367; 25 W. R. 317 24
—— *v.* Greene (1590), cited Sav. 133 319
—— *v.* Swansea Corporation (1844), 5 Q. B. 526; Dav. & Mer. 475; 13 L. J. (Q. B.) 107; 8 Jur. 213 386, 392
Halton *v.* Hassell (1736), 2 Stra. 1042 32
Hamilton *v.* Johnson (1879), 5 Q. B. D. 263; 49 L. J. (Q. B.) 155; 41 L. T. 461, C. A. 609
Hammersmith Rail. Co. *v.* Brand (1869), L. R. 4 H. L. 171; 38 L. J. (Q. B.) 265; 21 L. T. 238; 18 W. R. 12 389
Hammerton *v.* Honey (1876), 24 W. R. 603 8, 9
Hamond *v.* Hicks (1686), 1 Vern. 432 91
———— *v.* Howell (1675), 1 Mod. Rep. 184 256
———— *v.* Jethro (1611), 2 Brownl. 97 316
Hampshire Land Co., *Re*, [1896] 2 Ch. 743; 65 L. J. (CH.) 860; 75 L. T. 181; 45 W. R. 136 329, 363
Hanbury *v.* Hussey (1851), 14 Beav. 152; 14 L. J. (CH.) 557; 15 Jur. 596 . . 20
Handley *v.* London, Edinburgh and Glasgow Assurance Co., [1902] 1 K. B. 350; 71 L. J. (K. B.) 39 603, 605
Hanfstaengl *v.* American Tobacco Co., [1895] 1 Q. B. 347, C. A.; 64 L. J. (Q. B.) 277; 71 L. T. 864; 43 W. R. 261 . . . 141, 157, 191, 192, 195
———— *v.* Baines & Co., [1895] A. C. 20; 64 L. J. (CH.) 81; 72 L. T. 1 196, 197
———— *v.* Empire Palace, [1894] 2 Ch. 1; 63 L. J. (CH.) 417; 70 L. T. 459; 42 W. R. 454; 7 R. 375, C. A. . . . 164, 195, 196, 197
———— *v.* Newnes, [1894] 3 Ch. 109, C. A. 196, 197
———— *v.* Smith (W. H.) & Sons, [1905] 1 Ch. 519; 74 L. J. (CH.) 304; 92 L. T. 351; 21 T. L. R. 291 191, 196
———— Art Publishing Co. *v.* Holloway, [1893] 2 Q. B. 1; 57 J. P. 407; 5 R. 358; 68 L. T. 676 141, 157, 170, 172, 195
Hanmer *v.* Chance (1865), 4 De G. & Sm. 626; 34 L. J. (CH.) 413; 12 L. T. 163; 13 W. R. 156; 11 Jur. (N. S.) 397 8, 23
Harben *v.* Phillips (1883), 23 Ch. D. 14; 48 L. T. 334; 31 W. R. 173, C. A. . 350
Harbroe *v.* Combes (1874), 43 L. J. (CH.) 336 30
Hardacre *v.* Armstrong (1905), 21 T. L. R. 189 179, 180
Hardaker *v.* Idle District Council, [1896] 1 Q. B. 335; 60 J. P. 196; 65 L. J. (Q. B.) 363; 74 L. T. 69; 44 W. R. 323 387, 390
Hardcastle *v.* Dennison (1861), 4 L. T. 707 70
Hardwick *v.* Brown (1873), L. R. 8 C. P. 406; 28 L. T. 502; 21 W. R. 639 . 330
Hardwicke (Earl) *v.* Sandys (Lord) (1844), 12 M. & W. 761; 13 L. J. (EX.) 233 26
Hardy *v.* Reeves (1799), 4 Ves. 479 48
Hares *v.* Lea (1867), L. R. 10 Eq. 683; 22 L. T. 776; 18 W. R. 1083 . 446, 580

PAGE
Harman *v.* Tappenden (1801), 3 Esp. 278 ; 1 East, 555 334, 386
Harmer *v.* Steele (1848), 4 Exch. 1 ; 19 L. J. (EX.) 34 362
Harnett *v.* Vise (1881), 5 Ex. D. 307 ; 43 L. T. 645 ; 29 W. R. 7, C. A. . . 579
Harper & Brothers *v.* Biggs & Son (1907), *Times*, June 27, 1907 164
Harris *v.* Harris (1862), 10 W. R. 826 76
——— *v.* ——— (No. 3) (1863), 32 Beav. 333 ; 11 W. R. 451 35, 76
——— *v.* Jays (1594), 4 Co. Rep. 30 a ; Cro. Eliz. 699 61, 82, 84
——— *v.* Nicols (1583), Cro. Eliz. 19 20
——— *v.* Phillips, [1891] 1 Q. B. 267 ; 1 Fox & S. Reg. 223 ; 55 J. P. 281 . . 374
——— *v.* Sheldon and Smart, [1889] W. N. 92 ; 5 T. L. R. 594 . . . 152, 167, 168
——— *v.* Slater (1888), 21 Q. B. D. 359 ; 57 L. J. (Q. B.) 539 ; 37 W. R. 56 . 418
Harrison *v.* Hogg (1794), 2 Ves. 323 202, 205
——— *v.* Williams (1824), 4 Dow. & Ry. (K. B.) 820 ; 3 B. & C. 162 . . 340
Hascard (Dr.) *v.* Somany (Dr.) (1593), Freem. (K. B.) 504 344, 345, 346
Hastings Corporation *v.* Letton, [1908] 1 K. B. 338 ; 77 L. J. (K. B.) 149 ; 97 L. T. 582 ; 24 T. L. R. 456 ; 15 Mans. 58 373, 401
Hart, *Re*, *Ex parte* London School Board (1889), 41 Ch. D. 547 ; 58 L. J. (CH.) 752 ; 60 L. T. 817 ; 38 W. R. 61 73, 113
Hatton *v.* Kean (1859), 7 C. B. (N. S.) 268 ; 29 L. J. (C. P.) 20 ; 6 Jur. (N. S.) 226 ; 1 L. T. 10 ; 8 W. R. 7 176
Hauchett's Case (1566), Dyer, 251 102
Hawes *v.* Peake (1875), 33 L. T. 818 ; 24 W. R. 407 608
Hawke *v.* Hulton (E.) & Co., Ltd., [1909] 2 K. B. 93 ; 25 T. L. R. 474 . 358, 391
Hawkins *v.* R. (1813), 2 Dow. 124 ; 10 East, 211 353
——— *v.* Rutter, [1892] 1 Q. B. 668 ; 61 L. J. (Q. B.) 146 ; 40 W. R. 238 . 431
Haycraft Gold Reduction and Mining Co., *Re*, [1900] 2 Ch. 231 ; 69 L. J. (CH.) 496 ; 83 L. T. 166 ; 16 T. L. R. 350 341
Hayman *v.* Rugby School (Governors) (1874), L. R. 18 Eq. 28 ; 43 L. J. (CH.) 834 ; 30 L. T. 217 ; 22 W. R. 587 330
Haynes, *Re* (1842), 3 Curt. 75 357
Hayward *v.* Fulcher (1627), W. Jo. 166 397
——— *v.* Raw and Cruden (1861), 6 H. & N. 308 ; 30 L. J. (EX.) 178 ; 4 L. T. 519 31, 103
——— Brothers *v.* Lely & Co. (1887), 56 L. T. (N. S.) 418 . . 144, 155, 168
Hazlett *v.* Templemore (1866), 13 L. T. 593 159
Heap *v.* Hartley (1889), 42 Ch. D. 461 ; 58 L. J. (CH.) 790 ; 61 L. T. 538 ; 38 W. R. 136, C. A. 161
——— *v.* Marris (1876), 2 Q. B. D. 630 ; 46 L. J. (Q. B.) 761 487
——— *v.* Peart, [1891] 1 Q. B. 110 ; 39 W. R. 95 595
Heath *v.* Deane, [1905] 2 Ch. 86 ; 74 L. J. (CH.) 466 ; 92 L. T. 643 ; 21 T. L. R. 404 9, 17
——— *v.* Haynes (1857), 3 C. B. (N. S.) 389 ; K. & G. 99 ; 27 L. J. (C. P.) 50 ; 4 Jur. (N. S.) 664 ; 6 W. R. 52 374
Hebblethwaite *v.* Peever, [1892] 1 Q. B. 124 ; 40 W. R. 318 553
Hedd *v.* Chalener (or Chaloner) (1589), Cro. Eliz. 149 13, 14, 49, 66
Hellawell *v.* Eastwood (1850), 2 Exch. 295 ; 20 L. J. (EX.) 154 3, 11
Hemel Hempstead Coronership, *Re* (1855), 5 De G. M. & G. 228 ; 3 W. R. 192 225
Hemming *v.* Brabason (1660), O. Bridg. 1 367
——— *v.* Davies, [1898] 1 Q. B. 660 ; 67 L. J. (Q. B.) 458 ; 78 L. T. 500 ; 14 T. L. R. 309 ; 5 Mans. 73 440
——— *v.* Williams (1871), L. R. 6 C. P. 480 ; 40 L. J. (C. P.) 270 ; 24 L. T. 755 608
Henchman *v.* A.-G. (1834), 3 My. & K. 485 55
Henderson *v.* Australian Royal Mail Steam Navigation Co. (1855), 5 E. & B. 409 ; 24 L. J. (Q. B.) 322 ; 1 Jur. (N. S.) 830 ; 3 W. R. 571 . 383
——— *v.* Bank of Australasia (1890), 45 Ch. D. 330 ; 59 L. J. (CH.) 794 ; 2 Meg. 301, C. A. 347, 348
——— *v.* Maxwell (1876), 4 Ch. D. 163 ; 46 L. J. (CH.) 59 ; 25 W. R. 66 . 154
——— *v.* ——— (No. 2) (1877), 5 Ch. D. 892 ; 46 L. J. (CH.) 891 ; 25 W. R. 455 153
Henley, *Ex parte*, *Re* London and South Western Rail. Co. Extension Act. *See* London and South Western Rail. Co. Extension Act, *Re*, *Ex parte* Henley.
Henriques *v.* Dutch West India Co. (1728), 2 Ld. Raym. 1532 393
Hercules Insurance Co., *Re*, Pugh and Sharman's Case (1872), L. R. 13 Eq. 566 ; 41 L. J. (CH.) 580 ; 26 L. T. 274 322
Hereford (Bishop), *Ex parte*, *Ex parte* Saye and Sele (Lord) (1852), 5 De G. & Sm. 265 ; 21 L. J. (CH.) 608 121

PAGE

Hernaman *v.* Smith (1855), 10 Exch. 659 ; 3 C. L. R. 435 ; 24 L. J. (EX.) 175 : 1 Jur. (N. S.) 190 ; 3 W. R. 208 452, 613
Hertfordshire County Council *v.* Great Eastern Rail. Co., [1909] W. N. 124, C. A. 390
Hesketh *v.* Braddock (1766), 3 Burr. 1847 339
Hewet *v.* Norberow (1611), 1 Bulst. 52 ; Yelv. 194 ; Cro. Jac. 255 . . 13, 14
Hewston *v.* Phillips (1856), 11 Exch. 699 ; 25 L. J. (EX.) 133 ; 4 W. R. 293 . 445
Hext *v.* Gill (1872), 7 Ch. App. 699 ; 41 L. J. (CH.) 761 ; 27 L. T. 291 ; 20 W. R. 957 24
Hicks *v.* Sallitt (1853), 23 L. J. (CH.) 571 ; 18 Jur. 915 ; 3 De G. M. & G. 782 ; 1 W. R. 226, C. A. 19, 110
Hide *v.* Newport (1584), Moore (K. B.), 185 ; 1 Co. Rep. 31 b 85
—— *v.* Welsh (1583), Choyce Cases in Chancery, 165 69
Higgins *v.* Grant (1592), Cro. Eliz. 18 19
Higginson and Dean, *Re*, *Ex parte* A.-G., [1899] 1 Q. B. 325 ; 68 L. J. (Q. B.) 198 ; 79 L. T. 673 ; 47 W. R. 285 ; 15 T. L. R. 135 ; 5 Mans. 289 . 373, 401
Highton *v.* Treherne (1879), 48 L. J. (EX.) 167 ; 39 L. T. 411 ; 27 W. R. 245, C. A. 606
Hildesheimer *v.* Faulkner (W. and F.), Ltd., [1901] 2 Ch. 552 ; 70 L. J. (CH.) 800 ; 49 W. R. 708 ; 85 L. T. 322 ; 17 T. L. R. 737, C. A. . 199
———— and Faulkner *v.* Dunn & Co. (1891), 64 L. T. 452 . . . 142, 153
Hill, *Re*, Hill *v.* Swift (1855), 10 Exch. 726 ; 3 C. L. R. 724 ; 24 L. J. (EX.) 137 ; 1 Jur. (N. S.) 167 ; 3 W. R. 171 460, 612
—— *v.* Bolton (1689), Lut. 1165 67
—— *v.* Manchester and Salford Waterworks Co. (1833), 2 Nev. & M. (K. B.) 573 ; 5 B. & Ad. 866 ; 3 L. J. (K. B.) 19 310, 380
—— *v.* Perssé (1877), 25 W. R. 275 603
—— *v.* Tottenham Urban District Council (1898), 79 L. T. 495 ; 15 T. L. R. 3. 389
Hills *v.* Archer, [1904] W. N. 113 676
—— *v.* Hunt (1854), 15 C. B. 1 ; 2 C. L. R. 1781 335
—— *v.* Oxford University (1684), 1 Vern. 275 173
Hillyer *v.* St. Bartholomew's Hospital (Governors) (1909), 25 T. L. R. 468 . 388
Hilton *v.* Granville (Earl) (1844), 5 Q. B. 701 ; 13 L. J. (Q. B.) 193 ; Dav. & Mer. 614 23
Hime (or Hine) *v.* Dale (1803), 2 Camp. 28 ; 11 East, 244, n. . . . 143, 144
Hinks *v.* Clerk (1679), 2 Lev. 252 372
Hinton *v.* Hinton (1755), 2 Ves. Sen. 631 ; Amb. 277 79
Hirst *v.* West Riding Union Banking Co., Ltd., [1901] 2 K. B. 560 ; 70 L. J. (K. B.) 828 ; 85 L. T. 3 ; 17 T. L. R. 629, C. A. 358, 387
Hix *v.* Gardiner (1614), 2 Bulst. 196 39
Hoare *v.* Wilson (1867), L. R. 4 Eq. 1 ; 16 L. T. 112 ; 15 W. R. 548 . . . 16
——— & Co., Ltd. *v.* Lewisham Corporation (1902), 67 J. P. 20 ; 87 L. T. 464 ; 18 T. L. R. 816, C. A. 381
Hobart *v.* Hammond (1600), 4 Co. 27 b 30, 32
Hoblyn *v.* R. (1772), 2 Bro. Parl. Cas. 329 336
Hodder *v.* Williams, [1895] 2 Q. B. 663 ; 65 L. J. (Q. B.) 70 ; 73 L. T. 394 ; 44 W. R. 98 ; 14 R. 747, C. A. 559
Hodges *v.* Welsh (1840), 2 I. Eq. R. 266 146
Hodgson *v.* Bell (1890), 24 Q. B. D. 525 ; 59 L. J. (Q. B.) 231 ; 62 L. T. 481 ; 38 W. R. 325, C. A. 439
Hodson *v.* Walker (1872), L. R. 7 Exch. 55 ; 41 L. J. (EX.) 51 ; 25 L. T. 937 ; 20 W. R. 489 438
Hoe *v.* Taylor (1595), 4 Co. Rep. 31 b 85
Hogg *v.* Kirby (1803), 8 Ves. 215 165, 166
—— *v.* Maxwell (1867), 2 Ch. App. 307 ; 36 L. J. (CH.) 433 ; 16 L. T. 130 ; 15 W. R. 467 153
—— *v.* Scott (1874), L. R. 18 Eq. 444 ; 43 L. J. (CH.) 705 ; 31 L. T. 73 ; 22 W. R. 640 166, 169
Holcroft's (Lady) Case (1596), 4 Co. Rep. 30 b 60
Holden *v.* Smallbrooke (1667), Vaugh. 187 371
Holder d. Sulyard *v.* Preston (1769), 2 Wils. (K. B.) 400 . . . 28, 34, 104
Holdfast and Woollams *v.* Clapham (1787), 1 Term Rep. 600 ; 4 Burr. 1952 . 93
Hole *v.* Bradbury (1879), 12 Ch. D. 886 ; 48 L. J. (CH.) 673 ; 41 L. T. 153 ; 28 W. R. 39 156, 159, 161, 162, 167, 168
Holland, *Re*, *Ex parte* Warren (1885), 15 Q. B. D. 48 ; 54 L. J. (Q. B.) 320 ; 53 L. T. 68 ; 33 W. R. 572 ; 2 Morr. 142, C. A. 563, 566
——— *v.* Lancaster (1690), 2 Vent. 134 27, 45
Hollinrake *v.* Truswell, [1894] 3 Ch. 420 ; 63 L. J. (CH.) 719 ; 7 R. 568 ; 71 L. T. 419, C. A. 143, 145

PAGE
Holloway *v.* Berkeley (1826), 6 B. & C. 2 ; 5 L. J. (O. S.) (K. B.) 1 ; 9 Dow. & Ry. 83 34, 39, 43
Holmes *v.* Langfier (1903), *Times*, November 9, 1903 194
Holroyd *v.* Breare (1819), 2 B. & Ald. 473 11, 59, 65
Holt *v.* Everall (1876), 2 Ch. D. 266 ; 45 L. J. (CH.) 433 ; 34 L. T. 599 ; 24 W. R. 471, C. A. 670
—— *v.* Medlicott (1676), 1 Freem. (K. B.) 428 330
—— *v.* Woods (1896), 17 New South Wales Reports (Equity), 36 182
Holt's Case of Gray's Inn (1676), 1 Freem. (K. B.) 442 333
Homfray *v.* Scroope (1849), 13 Q. B. 589 ; 13 Jur. 623 ; 18 L. J. (Q. B.) 138 . 356
Hood-Barrs *v.* Heriot, *Ex parte* Blyth, [1896] 2 Q. B. 338 ; 65 L. J. (Q. B.) 624 ; 45 W. R. 17, C. A 551
Hooper *v.* Hill, [1894] 1 Q. B. 659 ; 63 L. J. (Q. B.) 598 ; 9 R. 332 ; 70 L. T. 224 ; 42 W. R. 394, C. A. 527
——— *v.* Ker, Stuart & Co., Ltd. (1900), 83 L. T. 729 ; 17 T. L. R. 162 . . 341
Hopkins *v.* Swansea Corporation (1839), 4 M. & W. 621 ; affirmed (1841), 8 M. & W. 901, Ex. Ch. 334
Hopkinson *v.* Burghley (Lord) (1867), 2 Ch. App. 447 ; 36 L. J. (CH.) 504 ; 15 W. R. 543. 138
Hopper *v.* Warburton (1863), 32 L. J. (Q. B.) 104 ; 7 L. T. 722 ; 11 W. R. 384 . 612
Horbury Bridge Coal, Iron and Waggon Co., *Re* (1879), 11 Ch. D. 109 ; 48 L. J. (CH.) 341 ; 43 L. T. 353 ; 27 W. R. 433, C. A. 349
Horlock *v.* Priestley (1827), 2 Sim. 73 95
Horn *v.* Ivy (1669), 1 Mod. Rep. 18 ; 1 Vent. 47 381, 382
Horncastle *v.* Charlesworth (1840), 11 Sim. 315 ; 10 L. J. (CH.) 35 ; 4 Jur. 1179 69
Horner *v.* Franklin, [1905] 1 K. B. 479 ; 69 J. P. 117 ; 74 L. J. (K. B.) 291 ; 92 L. T. 178 ; 21 T. L. R. 225 ; 3 L. G. R. 423, C. A. 648
——— *v.* Lewis (1898), 62 J. P. 345 ; 67 L. J. (Q. B.) 524 ; 78 L. T. 792 ; 14 T. L. R. 354 294
Horners Co. *v.* Barlow (1687), 3 Mod. Rep. 159 335
Horsnail *v.* Bruce (1872), L. R. 8 C. P. 378 ; 42 L. J. (C. P.) 140 ; 28 L. T. 705 ; 21 W. R. 597 613
Hotten *v.* Arthur (1863), 1 Hem. & M. 603 ; 32 L. J. (CH.) 771 ; 9 L. T. 199 ; 11 W. R. 934 146, 164
Houlden *v.* Smith (1850), 14 Q. B. 841 ; 19 L. J. (Q. B.) 170 ; 14 Jur. 598 . . 415
Houldsworth *v.* City of Glasgow Bank (1880), 5 App. Cas. 317 ; 42 L. T. 194 ; 28 W. R. 677 387
How *v.* London and North Western Rail. Co., [1892] 1 Q. B. 391 ; 61 L. J. (Q. B.) 368 ; 66 L. T. 398 ; 40 W. R. 292, C. A. 602
Howard *v.* Graves (1885), 52 L. T. 858 412, 581, 612
——— *v.* Gunn (1863), 32 Beav. 462 138
——— *v.* Gwynn (1901), 65 J. P. 327 ; 84 L. T. 505 ; 17 T. L. R. 455 . 35, 109
Howe *v.* Howe (1686), 1 Vern. 415 75
Howitt *v.* Hall (1862), 6 L. T., 348. 140, 161, 162
——— *v.* Harrington (Earl), [1893] 2 Ch. 497 ; 62 L. J. (CH.) 571 ; 68 L. T. 703 ; 41 W. R. 664 ; 3 R. 568 46
Howley *v.* Knight (1849), 14 Q. B. 240 ; 19 L. J. (Q. B.) 3 ; 14 Jur. 665 . 305, 380
Howorth *v.* Sutcliffe, [1895] 2 Q. B. 358 ; 59 J. P. 678 ; 64 L. J. (Q. B.) 729 ; 73 L. T. 277 ; 43 W. R. 33 ; 14 R. 722, C. A. 430, 431, 438
Hoyle *v.* Cornwallis (Lord) (1719), 1 Stra. 387 ; Fortes. Rep. 373. . . 258, 274
Hubbard *v.* Goodley (1890), 25 Q. B. D. 156 ; 59 L. J. (Q. B.) 285 ; 62 L. T. 763 ; 38 W. R. 639 429
Hudson, *Re*, Cassels *v.* Hudson, [1908] 1 Ch. 655 ; 77 L. J. (CH.) 305 ; 98 L. T. 567 ; 24 T. L. R. 333 78, 88
Hudspeth *v.* Yarnold (1850), 9 C. B. 625 ; 19 L. J. (C. P.) 321 ; 14 Jur. 578 . 429
Hughes, *Re*, [1884] W. N. 53 88
——— *v.* Smallwood (1890), 25 Q. B. D. 306 ; 55 J. P. 182 ; 59 L. J. (Q. B.) 503 ; 63 L. T. 198 564
Hughs *v.* Carpenter (1611), Toth. 180 96
Hull, *Re* (1882), 9 Q. B. D. 689 ; 2 Hale, P. C. 59 . . . 240, 241, 251, 253
—— *v.* Shurbrook (1604), Cro. Jac. 36 ; Co. Litt. 59 107
Hull, Barnsley, and West Riding Junction Rail. Co., *Re* (1889), 40 Ch. D. 119 ; 58 L. J. (CH.) 205 ; 59 L. T. 877 ; 37 W. R. 145 ; 5 T. L. R. 84 . . . 396
Humphreys *v.* Blythcr (1878), cited in Brown on Enfranchisement (1903), 474 124
———— *v.* Thomson & Co. (1908), *Times*, May 1, 1908. 159, 165
Hungerford *v.* Austen (1650), Nels. 49 54
——— *v.* Haviland (1626, 3 Bulst. 323 ; 1 W. Jo. 132 27, 40

PAGE
Hunt, *Re*, [1896] P. 288; 66 L. J. (P.) 8 357
—— *v.* Acton Urban District Council (1908), 72 J. P. 345; 6 L. G. R. 957 . 386
—— *v.* Great Northern Rail. Co. (1851), 10 C. B. 900. 431
—— *v.* Wimbledon Local Board (1878), 4 C. P. D. 48; 48 L. J. (C. P.) 207; 40 L. T. 115; 27 W. R. 123, C. A. 379, 386
Hurlestone's Case (1580), Dyer, 377 a 83
Hutchings *v.* Sheard, [1881] W. N. 20 144, 154
Hutchins and Romer, *Ex parte* (1879), 4 Q. B. D. 483; 48 L. J. (Q. B.) 505; 41 L. T. 144; 27 W. R. 857, C. A. 156, 181, 182
Hutchison *v.* Birch (1812), 4 Taunt. 619 559
Huth *v.* Long (1850), 19 L. J. (Q. B.) 325; 1 L. M. & P. 333; 15 Jur. 511 . . 452
Hutt, *Ex parte* (1839), 7 Dowl. (P. C.) 690; 3 Jur. 1105 16
Hymas *v.* Ogden, [1905] 1 K. B. 246; 74 L. J. (K. B.) 101; 91 L. T. 932; 21 T. L. R. 85; 53 W. R. 209, C. A. 429, 433, 569, 570, 591

I.

IDLE *v.* Cook (1705), 1 P. Wms. 70 68
Iles' Case (1671), 1 Vent. 153; 2 Keb. 802; T. Raym. 211 61
Imperial Book Co. *v.* A. & C. Black and Clarke Co. (1905), 21 T. L. R. 540 . 169
Imperial Continental Gas Association *v.* Nicholson (1877), 37 L. T. 717 . . 311
Inchiquin (Earl) *v.* Burnell (1795), 3 Ridg. Parl. Rep. 426 38
Ingle *v.* Vaughan Jenkins, [1900] 2 Ch. 368; 69 L. J. (CH.) 618; 48 W. R. 684; 83 L. T. 155 111
Ingram *v.* Stiff (1859), 33 L. T. (O. S.) 195, C. A. 144
Insley *v.* Jones (1879), 4 Ex. D. 16; 48 L. J. (EX.) 222; 27 W. R. 111 . . 439
International Financial Society *v.* Moscow (City) Gas Co. (1877), 7 Ch. D. 241; 47 L. J. (CH.) 258; 37 L. T. 736; 26 W. R. 272, C. A. 606
Ipswich Tailors' Case (1614), 11 Co. Rep. 53 a 338
Irish Land Commission *v.* Grant (1884), 10 App. Cas. 14; 52 L. T. 228; 33 W. R. 357 357
Irvine *v.* Union Bank of Australia (1877), L. R. 4 Ind. App. 86 363
Irving *v.* Askew (1870), L. R. 5 Q. B. 208; 39 L. J. (Q. B.) 118; 18 W. R. 467 . 534, 612, 617
Islington Market Bill, *Re* (1835), 3 Cl. & Fin. 513; 12 M. & W. 20, n. . 320, 321

J.

JABLOCHKOFF Electric Light Co. *v.* McMurdo, [1884] W. N. 94 591
Jackson *v.* Beaumont (1855), 24 L. J. (EX.) 301 451
—— *v.* Grimley (1864), 16 C. B. (N. S.) 380; 33 L. J. (C. P.) 238; 10 L. T. 340; 12 W. R. 686. 452
—— *v.* Margrett (1893), 5 R. 181; 68 L. T. 91; 41 W. R. 267 . . . 605
Jardine *v.* Smith (1860), 8 W. R. 464 615
Jarrold *v.* Heywood (1870), 18 W. R. 279 164
—— *v.* Houlston (1857), 3 K. & J. 708; 3 Jur. (N. S.) 1051 145
Jarrow Building Society *v.* Travers (1889), 88 L. T. Jo. 48 437
Jay *v.* Johnstone, [1893] 1 Q. B. 189; 57 J. P. 309; 62 L. J. (Q. B.) 128; 68 L. T. 129; 41 W. R. 161; 4 R. 196, C. A. 553
Jeans *v.* Cooke (1857), 27 L. J. (CH.) 202; 6 W. R. 175; 4 Jur. (N. S.) 57; 24 Beav. 513 74
Jefferies, *Ex parte* (1829), 6 Bing. 195; 3 Moo. & P. 450 251
Jefferys *v.* Boosey (1854), 4 H. L. Cas. 815; 3 C. L. R. 625: 24 L. J. (EX.) 81; 1 Jur. (N. S.) 615 136, 137, 139, 161, 163, 189, 202
—— *v.* Gurr (1831), 2 B. & Ad. 833; 1 L. J. (K. B.) 23 320, 392
Jeffris *v.* Tomlinson (1886), 3 T. L. R. 193 551
Jenkins *v.* Harvey (1836), 1 Gale, 454 321
Jennings, *Re*, [1903] 1 Ch. 906; 67 J. P. 367; 72 L. J. (CH.) 454; 88 L. T. 387; 51 W. R. 425 15, 16, 59, 60
—— *v.* General Omnibus Co. (No. 2) (1874), 30 L. T. 640; 22 W. R. 757 . 441, 527
Jersey (Earl) *v.* Uxbridge Rural Sanitary Authority, [1891] 3 Ch. 183; 60 L. J. (CH.) 833; 64 L. T. 858 396
Jesus College, Oxford *v.* Gibbs (1835), 1 Y. & C. (EX.) 145; 4 L. J. (EX. EQ.) 42 . 367
Jewison *v.* Dyson (1842), 9 M. & W. 540; 11 L. J. (EX.) 401 . . . 211, 214

PAGE
Johnson *v.* Newnes (George), Ltd., [1894] 3 Ch. 663; 63 L. J. (CH.) 786; 8 R. 500; 71 L. T. 230 142, 147, 154
——— *v.* Palmer (1879), 4 C. P. D. 258; 27 W. R. 941 440
Johnston and Toronto Type Foundry Co. *v.* Consumers Gas Co. of Toronto, [1898] A. C. 447; 67 L. J. (P. C.) 33; 78 L. T. 270 393
Johnstone *v.* Spencer (Earl) (1885), 30 Ch. D. 581; 53 L. T. 502; 34 W. R. 10 30, 100
Joint Stock Discount Co. *v.* Brown (1869), L. R. 8 Eq. 381; 20 L. T. 844; 17 W. R. 1037 364
Joliffe *v.* Wallasey Local Board (1873), L. R. 9 C. P. 62; 43 L. J. (C. P.) 41; 29 L. T. 582 389
Jonas *v.* Long (1888), 20 Q. B. D. 564; 52 J. P. 468; 57 L. J. (Q. B.) 298; 58 L. T. 787; 36 W. R. 315, C. A. 602, 625
Jones, *Re*, Christmas *v.* Jones, [1897] 2 Ch. 190; 66 L. J. (CH.) 439; 76 L. T. 454; 45 W. R. 598 589
——— *v.* Biernstein, [1900] 1 Q. B. 100; 69 L. J. (Q. B.) 1; 81 L. T. 553; 16 T. L. R. 30; 48 W. R. 232, C. A. 604, 609
——— *v.* Curling (1884), 13 Q. B. D. 262; 53 L. J. (Q. B.) 373; 50 L. T. 349; 32 W. R. 651, C. A. 578
——— *v.* Festiniog Rail. Co. (1868), L. R. 3 Q. B. 733; 9 B. & S. 835; 37 L. J. (Q. B.) 214; 18 L. T. 902; 17 W. R. 28 389
——— *v.* James (1850), 19 L. J. (Q. B.) 257; 1 L. M. & P. 65 614
——— *v.* Owen (1848), 18 L. J. (Q. B.) 8; 5 Dow. & L. 669; 13 Jur. 261 . . 437
——— *v.* Thomas (1861), 4 L. T. 210 437
——— *v.* Williams (1825), 3 B. & C. 762; 5 Dow. & Ry. (K. B.) 654; 1 C. & P. 459; 3 L. J. (O. S.) (K. B.) 112; 27 R. R. 474 329
Jordan *v.* Jones (1880), 44 J. P. 800 526
Jorden *v.* Atwood (1605), Owen, 121 113
Jordeson *v.* Sutton Southcoates and Drypool Gas Co., [1899] 2 Ch. 217; 63 J. P. 692; 68 L. J. (CH.) 457; 80 L. T. 815; 15 T. L. R. 374, C. A. . . . 389
Joseph *v.* Henry (1850), 19 L. J. (Q. B.) 369; 1 L. M. & P. 388; 15 Jur. 104 . 612
Jude's Musical Compositions, *Re*, [1907] 1 Ch. 651; 76 L. J. (CH.) 542; 96 L. T. 766; 23 T. L. R. 461, C. A. 157, 160, 161

K.

KARNO *v.* Pathé Freres (1908), 99 L. T. 114; 24 T. L. R. 588; affirmed (1909), 100 L. T. 260; 25 T. L. R. 242, C. A. 183, 185
Kay *v.* Briggs (1889), 22 Q. B. D. 343; 58 L. J. (Q. B.) 182; 60 L. T. 775; 37 W. R. 291, C. A. 609
Kearney *v.* London, Brighton, and South Coast Rail. Co. (1871), L. R. 6 Q. B. 759; 40 L. J. (Q. B.) 285; 24 L. T. 913; 20 W. R. 24 389
Keates *v.* Woodward, [1902] 1 K. B. 532; 71 L. J. (K. B.) 325; 86 L. T. 369; 18 T. L. R. 288; 50 W. R. 258, C. A. 592
Keats *v.* Hewer (1864), 11 L. T. 290; 13 W. R. 34; 10 Jur. (N. S.) 1040, C. A. 82, 84
Keeble *v.* Bennett, [1894] 2 Q. B. 329; 63 L. J. (Q. B.) 694; 10 R. 290; 71 L. T. 247; 42 W. R. 539 587
Kehoe *v.* Lansdowne (Marquess), [1893] A. C. 451; 57 J. P. 708; 62 L. J. (P. C.) 97; 1 R. 294 306
Kelly *v.* Byles (1880), 13 Ch. D. 682; 49 L. J. (CH.) 181; 28 W. R. 585, C. A. 144, 165
——— *v.* Hooper (1841), 1 Y. & C. Ch. Cas. 197; 4 Jur. 21 164, 166
——— *v.* Hutton (1868), 3 Ch. App. 703; 37 L. J. (CH.) 917; 19 L. T. 703; 16 W. R. 1182 144
——— *v.* Morris (1866), L. R. 1 Eq. 697; 35 L. J. (CH.) 423; 14 L. T. 222; 14 W. R. 496 145, 146
——— *v.* Webster (1852), 16 Jur. 838 609
——— *v.* Wyman (1869), 17 W. R. 399 168
Kelly's Directories, Ltd. *v.* Gavin and Lloyd's, [1902] 1 Ch. 631; 71 L. J. (CH.) 405; 86 L. T. 393; 18 T. L. R. 346; 50 W. R. 385, C. A. 166
Kelner *v.* Baxter (1866), L. R. 2 C. P. 174; 36 L. J. (C. P.) 94; 12 Jur. (N. S.) 1016; 15 L. T. 313; 15 W. R. 278 379
Kemp *v.* Clark (1848), 12 Q. B. 647; 17 L. J. (Q. B.) 305; 12 Jur. 676 . . 451
——— *v.* Neville (1861), 10 C. B. (N. S.) 523; 31 L. J. (C. P.) 158; 7 Jur. (N. S.) 913; 4 L. T. 640; 10 W. R. 6 415
Kenrick *v.* Danube Collieries and Minerals Co. (1891), 39 W. R. 473...136, 137, 139, 143
——— & Co. *v.* Lawrence & Co. (1890), 25 Q. B. D. 99; 38 W. R. 779 . 197, 201
Kensington *v.* Mansell (1806), 13 Ves. 253 30

PAGE
Kentish *v.* Kentish (1791), 3 Bro. C. C. 257 70
Kerkin *v.* Kerkin (1854), 3 E. & B. 399; 18 Jur. 813 437
Kerr *v.* Pawson (1858), 25 Beav. 394; 27 L. J. (CH.) 594; 6 W. R. 447; 4 Jur. (N. S.) 425 126
—— *v.* Wilkie (1860), 6 Jur. (N. S.) 383; 1 L. T. 501; 8 W. R. 286 . . . 348
Kershaw *v.* Chantler (1872), 26 L. T. 474 615
Keynsham Blue Lias Lime Co. *v.* Baker (1863), 33 L. J. (EX.) 41; 2 H. & C. 729; 9 Jur. (N. S.) 1346; 9 L. T. 418; 12 W. R. 156 450
Kidderminster Corporation *v.* Hardwick (1873), L. R. 9 Exch. 13; 43 L. J. (EX.) 9; 29 L. T. 612; 22 W. R. 160 380, 381, 385
Kimpton *v.* Willey (1850), 9 C. B. 719; 1 L. M. & P. 280; 19 L. J. (C. P.) 269; 14 Jur. 765 429, 459
King *v.* Baylay (1831), 1 B. & Ad. 761 321
—— *v.* Dilliston (1688), 3 Mod. Rep. 221; 1 Shaw, 31; 1 Salk. 386; Comb. 118; Carth. 41; 1 Lut. 765 58
—— *v.* Moody (1826), 2 Sim. & St. 579; 4 L. J. (O. S.) (CH.) 227 . . . 110
—— *v.* Oxford Co-operative Society (1884), 51 L. T. 94 609
—— *v.* Turner (1833), 1 My. & K. 456; 2 L. J. (CH.) 188 101
Kingsmill *v.* Bull (1808), 9 East, 185 43
Kirk *v.* Nowill (1786), 1 Term Rep. 118 340
Kirkheaton District Local Board *v.* Ainley, Sons & Co., [1892] 2 Q. B. 274; 57 J. P. 36; 61 L. J. (Q. B.) 812; 67 L. T. 209; 41 W. R. 99, C. A. . . . 603, 682
Kirschman *v.* Fitch (1890), 7 T. L. R. 475 439
Kite and Quienton's Case (1589), 4 Co. Rep. 25 b 107
Knatchbull *v.* Fowle (1876), 1 Ch. D. 604; 24 W. R. 629 480, 481
Knight, *Re*, Gwynne *v.* Knight (1847), 1 Exch. 802; 12 Jur. 101; 17 L. J. (EX.) 168 431
——— *v.* Abbott, Page & Co. (1882), 10 Q. B. D. 11; 52 L. J. (Q. B.) 131; 31 W. R. 505 439
——— *v.* Footman (1588), 1 Leon. 95; Cro. Eliz. 90 96
——— *v.* Wells Corporation (1694), Lut. 508 308
——— *v.* ——— ——— (1696), 1 Ld. Raym. 80 307
Knowles *v.* Luce (1580), Moore (K. B.), 109; Sav. 7 61, 62
Kodak, Ltd. *v.* Clark, [1903] 1 K. B. 505; 67 J. P. 213; 72 L. J. (K. B.) 369; 88 L. T. 155; 51 W. R. 459; 19 T. L. R. 243, C. A. 312
Kren *v.* Kirby (1675), 2 Mod. Rep. 32 96
Kruse *v.* Johnson, [1898] 2 Q. B. 94; 62 J. P. 469; 67 L. J. (Q. B.) 782; 78 L. T. 647; 46 W. R. 631; 14 T. L. R. 416; 19 Cox, C. C. 103 . 335, 337, 338
Kutner *v.* Phillips, [1891] 2 Q. B. 267; 56 J. P. 54; 60 L. J. (Q. B.) 505; 64 L. T. 628; 39 W. R. 526 449

L.

LABOUCHERE *v.* Hess (1897), 77 L. T. 559 138
Lacey *v.* Hill (1875), L. R. 19 Eq. 346; 44 L. J. (CH.) 215; 32 L. T. 48; 23 W. R. 285 79
Lacons *v.* Warmoll, [1907] 2 K. B. 350; 76 L. J. (K. B.) 914; 97 L. T. 379; 23 T. L. R. 495, C. A. 546
Lacy *v.* Rhys (1864), 4 B. & S. 873; 33 L. J. (Q. B.) 157; 10 Jur. (N. S.) 612; 9 L. T. 607; 12 W. R. 309 181, 182
—— *v.* Toole (1867), 15 L. T. (N. S.) 512 159, 181
Laird *v.* Birkenhead Rail. Co. (1859), 1 Johns. 580; 29 L. J. (CH.) 218; 6 Jur. (N. S.) 140, 1 L. T. 259; 8 W. R. 58 381
Lalor, *Re* (1901), 71 L. J. (P.) 17; 85 L. T. 643; 18 T. L. R. 15 306
Lamb *v.* Evans, [1893] 1 Ch. 218; 62 L. J. (CH.) 404; 68 L. T. 131; 2 R. 189; 41 W. R. 405, C. A. 142, 146, 147, 158
—— *v.* ——, [1895] W. N. 156, C. A. 166
—— *v.* Newbiggin (1844), 1 Car. & Kir. 549 7
—— *v.* Wiseman (1615), Cro. Jac. 383 249
Lambert *v.* Lowestoft Corporation, [1901] 1 K. B. 590; 65 J. P. 326; 70 L. J. (K. B.) 333; 84 L. T. 237; 17 T. L. R. 273; 49 W. R. 316 . . . 389
——— *v.* Taylor (1825), 4 B. & C. 138; 6 Dow. & Ry. (K. B.) 188 . . . 271
Lamond, *Ex parte*, *Re* Dod, Longstaffe & Co. *See* Dod, Longstaffe & Co., *Re*, *Ex parte* Lamond.
Lamprell *v.* Billericay Union (1849), 3 Exch. 283; 18 L. J. (EX.) 282 . . . 384
Lancaster *v.* Lucas (1590), 1 Leon. 233 83

PAGE
Landa *v.* Greenberg (1908), 24 T. L. R. 441 ; 52 Sol. Jo. 354 144
Land Credit Co. of Ireland, *Re* (1869), 4 Ch. App. 460 361, 362
Landeker *v.* Wolff & Co. (1907), 52 Sol. Jo. 45 193
Landewibrevye College Case (1568), Jenk., case 7 315
Lane (George) and Irving (John), *Re* (1864), 12 W. R. 710 106
Langlois and Biden, *Re*, [1891] 1 Q. B. 349 ; 60 L. J. (Q. B.) 123 ; 63 L. T. 816 ; 39 W. R. 335, C. A. 581, 585
Lanyon *v.* Carne (1669), 2 Saund. 165 ; 2 Wms. Saund. 485 ; 1 Sid. 437 ; 1 Vent. 91 ; 1 Lev. 294 ; 2 Keb. 505 37, 38, 41, 42
Lascelles *v.* Onslow (Lord) (1877), 2 Q. B. D. 433 ; 46 L. J. (Q. B.) 333 ; 36 L. T. 459 ; 25 W. R. 496 85
Lauri *v.* Renad, [1892] 3 Ch. 402 ; 61 L. J. (CH.) 580 ; 67 L. T. 275 ; 40 W. R. 679, C. A. 150, 160, 184
Lavey *v.* R. (1852), 17 Q. B. 496 ; 21 L. J. (M.C.) 10 ; 2 Den. C. C. 504 ; 16 Jur. 36 ; 5 Cox, C. C. 269 617
Lawford *v.* Billericay Rural Council, [1903] 1 K. B. 772 ; 67 J. P. 245 ; 72 L. J. (K. B.) 554 ; 88 L. T. 317 ; 19 T. L. R. 332 ; 1 L. G. R. 535 ; 51 W. R. 630, C. A. 383, 384
——— *v.* Partridge (1857), 1 H. & N. 261 ; 26 L. J. (EX.) 147 ; 3 Jur. (N. S.) 271 ; 5 W. R. 295 612
Lawrence *v.* Great Northern Rail. Co. (1851), 16 Q. B. 643 ; 6 Ry. & Can. Cas. 656 ; 20 L. J. (Q. B.) 293 ; 15 Jur. 652 389
——— *v.* Smith (1822), 1 Jac. 471 144
——— and Bullen, Ltd. *v.* Aflalo, [1904] A. C. 17 ; 73 L. J. (CH.) 85 ; 52 W. R. 369 ; 89 L. T. 569 ; 20 T. L. R. 42 142, 148, 158
Lea *v.* Parker (1884), 13 Q. B. D. 835 ; 54 L. J. (Q. B.) 38 ; 33 W. R. 101, C. A. 441, 442
Leach *v.* South Eastern Rail. Co. (1876), 34 L. T. 134 609
Lead Co.'s Workmen's Fund Society, *Re*, [1904] 2 Ch. 196 ; 73 L. J. (CH.) 628 ; 91 L. T. 433 ; 20 T. L. R. 504 303
Leader *v.* Purday (1849), 7 C. B. 4 ; 18 L. J. (C. P.) 97 ; 12 Jur. 1091 . 168, 176, 187
——— *v.* Rhys (1861) ; 10 C. B. (N. S.) 369 ; 30 L. J. (C. P.) 345 ; 7 Jur. (N. S.) 1199 ; 4 L. T. 330 ; 9 W. R. 704 428
——— *v.* Strange (1849), 2 Car. & Kir. 1010. 169
Leconfield (Lord) *v.* London and North Western Rail. Co., [1907] 1 Ch. 38 ; 76 L. J. (CH.) 33 ; 95 L. T. 672 ; 23 T. L. R. 31 29, 45, 129
Lee *v.* Aylesbury Urban District Council (1902), 19 T. L. R. 106 396
—— *v.* Gibbings (1892), 67 L. T. 263 159
—— *v.* Simpson (1847), 3 C. B. 871 ; 4 Dow. & L. 666 ; 16 L. J. (C. P.) 105 ; 11 Jur. 127 164, 175, 185, 187
Leeds (Duke) *v.* Strafford (Earl) (1798), 4 Ves. 180 47
Leeds Banking Co., *Re*, Matthewman's Case, (1866), L. R. 3 Eq. 781 ; 15 L. T. 266 ; 36 L. J. (CH.) 90 ; 15 W. R. 146 322
Leigh *v.* Burley (1610), Owen, 122 233
——— *v.* Green, [1892] P. 17 ; 61 L. J. (P.) 66 646
Leight *v.* Pym (1686), 2 Lut. 1329 401
Lenaghan, *Re*, Robinson *v.* Lenaghan (1848), 2 Exch. 333 ; 5 Dow. & L. 713 ; 17 L. J. (EX.) 174 ; 12 Jur. 399 613
Leslie *v.* Young & Sons, [1894] A. C. 335 ; 6 R. 211 142, 145
Lester *v.* Garland (1808), 15 Ves. 248 368
Le Strange *v.* Rowe (1866), 4 F. & F. 1048 4
Le Tailleur *v.* South Eastern Rail. Co. (1877), 3 C. P. D. 18 . . . 312, 394, 450
Le Texier *v.* Anspach (Margravine) (1808), 15 Ves. 154 387
Letsom *v.* Bickley (1816), 5 M. & S. 144 248
Levi *v.* Champion & Co. (1887), 3 T. L. R. 286 193
Levy *v.* Moylan (1850), 10 C. B. 189 ; 1 L. M. & P. 307 ; 19 L. J. (C. P.) 308 ; 14 Jur. 983 411, 616
—— *v.* Rutley (1871), L. R. 6 C. P. 523 ; 40 L. J. (C. P.) 244 ; 24 L. T. 621 ; 19 W. R. 976 137, 176
Lewis *v.* Branthwaite (1831), 2 B. & Ad. 427 ; 9 L. J. (O. S.) (K. B.) 263 . . 22
——— *v.* Chapman (1840), 3 Beav. 133 166
——— *v.* Fullarton (1839), 2 Beav. 6 ; 8 L. J. (CH.) 291 ; 3 Jur. 669 . . 145, 166
——— *v.* Lane (1834), 2 My. & K. 449 74
——— *v.* Owen, [1894] 1 Q. B. 102 ; 58 J. P. 263 ; 63 L. J. (Q. B.) 233 ; 10 R. 59 ; 69 L. T. 861 ; 42 W. R. 254 603
——— *v.* Pontypridd etc. Rail. Co. (1895), 11 T. L. R. 203 396
Lewis and Davis *v.* Burrell (1898), 77 L. T. 626 485
Lexden Guardians *v.* Southgate (1854), 10 Exch. 201 ; 23 L. J. (EX.) 316 . . 613

PAGE
Leyland *v.* Stewart (1876), 4 Ch. D. 419; 46 L. J. (CH.) 103; 25 W. R. 225 . 159
Licensed Victuallers Newspaper Co. *v.* Bingham (1888), 38 Ch. D. 139; 58 L. J. (CH.) 36; 59 L. T. 187; 36 W. R. 433, C. A. 144
Lidiard and Jackson's and Broadley's Contract, *Re* (1889), 42 Ch. D. 254; 58 L. J. (CH.) 785; 61 L. T. 322; 37 W. R. 793 58, 114
Lilley *v.* Harvey (1848), 17 L. J. (Q. B.) 357; 5 Dan. & Ll. 648; 2 B. & C. Rep. 312; 17 L. J. (Q. B.) 357; 12 Jur. 1026 430
Limpus *v.* London General Omnibus Co. (1862), 1 H. & C. 526; 32 L. J. (EX.) 34; 9 Jur. (N. S.) 333; 7 L. T. 641; 11 W. R. 149. 387, 388
Lindsey (Earl) *v.* Great Northern Rail. Co. (1853), 10 Hare, 665; 22 L. J. (CH.) 995; 17 Jur. 522; 1 W. R. 257 385
Linford *v.* Gudgeon (1871), 6 Ch. App. 359; 40 L. J. (CH.) 514; 19 W. R. 577. 415, 443
Lingwood *v.* Gyde (1866), L. R. 2 C. P. 72; 36 L. J. (C. P.) 10; 16 L. T. 229; 15 W. R. 311 67, 115, 124
Linton *v.* Blakney Industrial Society (1865), 3 H. & C. 853; 34 L. J. (EX.) 211; 13 L. T. 39; 13 W. R. 843 307
Liquidators of the British National Life Assurance Association, *Ex parte*, *Re* European Society Arbitration Act. *See* European Society Arbitration Acts, *Re*, *Ex parte* Liquidators of the British National Life Assurance Association.
Lister *v.* Wood (1889), 23 Q. B. D. 229; 53 J. P. 773; 37 W. R. 738, C. A. . 548
Liverpool Corporation *v.* Chancellor of the County Palatine of Lancaster (1712), 1 Stra. 151 401
Liverpool General Brokers' Association *v.* Commercial Press Telegram Bureaux, [1897] 2 Q. B. 1; 66 L. J. (Q. B.) 405; 76 L. T. 292 . . . 152, 153, 159
Livesey *v.* Livesey (1839), 10 Sim. 331; 9 L. J. (CH.) 73 380
Lloyd *v.* Jones (1848), 6 C. B. 81; 5 Dan. & Ll. 784; 17 L. J. (C. P.) 206; 12 Jur. 657 430, 431
——— *v.* Loaring (1802), 6 Ves. 773 303
Lloyd Generale Italiano, *Re* (1885), 29 Ch. D. 219; 54 L. J. (CH.) 748; 33 W. R. 728 393
Local Government Act, *Re* (1888), *Ex parte* London County Council, [1892] 1 Q. B. 33; 56 J. P. 279; 61 L. J. (Q. B.) 27; 65 L. T. 614 . . 215, 234
Lock, *Re*, *Ex parte* Poppleton (1890), 39 W. R. 15 426
——— *Re*, *Ex parte* Poppleton (No. 1) (1891), 8 Morr. 44 608
Locke *v.* Colman (1836), 1 My. & Cr. 423 86
——— *v.* Southwood (1831), 1 My. & Cr. 411; affirmed, *sub nom.* Bush *v.* Locke (1834), 3 Cl. & Fin. 721, H. L. 86
Logan *v.* Bank of Scotland, [1904] 2 K. B. 495; 73 L. J. (K. B.) 794; 91 L. T. 252; 20 T. L. R. 640; 53 W. R. 39, C. A. 395
Londesborough (Lord) *v.* Foster (1863), 8 L. T. 240; 32 L. J. (Q. B.) 225; 11 W. R. 593; 3 B. & S. 805; 9 Jur. (N. S.) 1173 33
London *v.* Southwell Collegiate Church (1619), Hob. 303 370
London (City) *v.* Wood (1701), 12 Mod. Rep. 669 339
London's (Chamberlain) Case (1590), 5 Co. Rep. 62 b; 3 Leon. 264 . . 335, 339
——— (City) Case (1609), 8 Co. Rep. 121 b 370
London and Birmingham Rail. Co. *v.* Winter (1840), Cr. & Ph. 57 381
London and Brighton Rail. Co. *v.* Truman (1885), 11 App. Cas. 45; 50 J. P. 388; 55 L. J. (CH.) 354; 54 L. T. 250; 34 W. R. 657 389
London and South Western Rail. Exeter Extension Act, 1856, *Ex parte* Henley (Lord) (1861), 29 Beav. 311 21, 56, 82, 84
London Association of Shipowners and Brokers *v.* London and India Docks Joint Committee, [1892] 3 Ch. 242; 62 L. J. (CH.) 294; 67 L. T. 238, C. A. 334, 335, 336
London Corporation *v.* Cox (1867), L. R. 2 H. L. 239; 36 L. J. (EX.) 225; 16 W. R. 44 612, 614
——— *v.* London Joint Stock Bank (1881), 6 App. Cas. 393; 50 L. J. (Q. B.) 594; 45 L. T. 81; 29 W. R. 870 397
London County Council *v.* A.-G., [1902] A. C. 165; 66 J. P. 340; 71 L. J. (CH.) 268; 86 L. T. 161; 50 W. R. 497; 18 T. L. R. 298 359, 364
——— and London Tramways Arbitration (1897), 13 T. L. R. 254 395
London Dock Co. *v.* Sinnott (1857), 8 E. & B. 347; 27 L. J. (Q. B.) 129; 4 Jur. (N. S.) 70; 6 W. R. 165 383
London Fancy Box Co., Ltd. *v.* Berkeley (1906), 95 L. T. 727 497
London Printing and Publishing Alliance, Ltd. *v.* Cox, [1891] 3 Ch. 291; 60 L. J. (CH.) 707; 65 L. T. 60, C. A. 155, 159, 161, 162, 163, 203

PAGE
London School Board, *Ex parte, Re* Hart. *See* Hart, *Re, Ex parte* London School Board.
London Scottish Benefit Society *v.* Chorley (1884), 13 Q. B. D. 872; 53 L. J. (Q. B.) 551; 51 L. T. 100; 32 W. R. 781, C. A. 584
London Stereoscopic Co. *v.* Kelly (1888), 5 T. L. R. 169 196
London Tobacco Pipe Makers' Co. *v.* Woodroffe (1828), 7 B. & C. 838 . 311, 316, 337, 338
Long's Case (1604), 5 Co. Rep. 120 274, 284
Longbottom *v.* Longbottom (1852), 8 Exch. 203; 22 L. J. (EX.) 74 610
Lord *v.* Copper Miners (Governor and Company of) (1848), 2 Ph. 740; 1 H. & Tw. 85; 18 L. J. (CH.) 65 347, 394
Lovejoy *v.* Cole, [1894] 2 Q. B. 861; 64 L. J. (Q. B.) 120; 10 R. 482; 71 L. T. 374; 43 W. R. 48 429
Lovell *v.* Lovell (1743), 3 Atk. 11 91
Lover *v.* Davidson (1856), 1 C. B. (N. S.) 182 153, 176, 180, 187
Low *v.* Routledge (1864), 33 L. J. (CH.) 717; 10 Jur. (N. S.) 922; 10 L. T. 838; 12 W. R. 1069 152
—— *v.* ———— (1865), 1 Ch. App. 42; 35 L. J. (CH.) 114; 13 L. T. 421; 11 Jur. 939; 14 W. R. 90, C. A. 153
—— *v.* Ward (1868), L. R. 6 Eq. 415; 37 L. J. (CH.) 841; 16 W. R. 1114 . . 142
Lowe *v.* Dorling (1905), 74 L. J. (K. B.) 794 604
—— *v.* London and North Western Rail. Co. (1852), 18 Q. B. 632; 7 Ry. & Can. Cas. 524; 21 L. J. (Q. B.) 361; 17 Jur. 375 . . . 385, 392
Lowe's Case (1609), 9 Co. Rep. 123 316
Lowther *v.* Caledonian Rail. Co., [1892] 1 Ch. 73; 61 L. J. (CH.) 108; 66 L. T. 62; 40 W. R. 225, C. A 129
———— *v.* Raw (1735), 2 Bro. Parl. Cas. 451 26
———— *v.* Moncrieff (1905), 21 T. L. R. 683 162
———— *v.* Williams & Sons, [1892] 2 Q. B. 113; 61 L. J. (Q. B.) 595; 66 L. T. 706, C. A. 197
Ludlow Corporation *v.* Charlton (1840), 6 M. & W. 815 309, 384
Lumb *v.* Teal & Co. (1889), 22 Q. B. D. 675; 58 L. J. (Q. B.) 298; 60 L. T. 451 602, 608
Luttrell's Case (1601), 4 Co. Rep. 86, a 308
Lyme Regis Corporation *v.* Hensley (1834), 1 Bing. (N. C.) 222; 1 Scott, 29; 2 Cl. & Fin. 331; 8 Bli. (N. S.) 690 317
Lyon *v.* Knowles (1863), 3 B. & S. 556; 32 L. J. (Q. B.) 71; 9 Jur. (N. S.) 774; 7 L. T. 670; 11 W. R. 266; affirmed 5 B. & S. 751; 10 L. T. 876; 12 W. R. 1083 185
Lytton (Earl) *v.* Devey (1884), 54 L. J. (CH.) 293; 52 L. T. 121 138

M.

MABE *v.* Connor, [1909] 1 K. B. 515 170
McAndrew *v.* Barker (1878), 7 Ch. D. 701; 47 L. J. (CH.) 340; 37 L. T. 810; 26 W. R. 317, C. A. 606
McCosh *v.* Crow & Co. (1902), 5 F. (Ct. of Sess.) 670 194
McDonnell *v.* Kavanagh (1887), 37 L. T. 444 441
McDougall *v.* Gardiner (1875), 1 Ch. D. 13; 45 L. J. (CH.) 27, C. A. . . 347, 394
Macdougall *v.* Paterson (1851), 11 C. B. 755; 2 L. M. & P. 681; 21 L. J. (C. P.) 27; 15 Jur. 1108 449
M'Eachen & Co. *v.* Sallyco Mineral Water Co. (1903), 19 T. L. R. 208 . . 588
McFarlane *v.* Hulton, [1899] 1 Ch. 884; 68 L. J. (CH.) 408; 80 L. T. 486; 47 W. R. 507. 139, 147
M'Fee, *Ex parte* (1853), 9 Exch. 261; 23 L. J. (EX.) 57; 2 C. L. R. 278 . . 612
McGrah *v.* Cartwright (1889), 23 Q. B. D. 3; 58 L. J. (Q. B.) 331; 60 L. T. 537; 37 W. R. 619 608
Macgregor *v.* Dover and Deal Rail. Co. (1852), 18 Q. B. 618; 22 L. J. (Q. B.) 69 . 361
McGregor *v.* McGregor (1887), 57 L. J. (Q. B.) 268 432
Machell *v.* Nevinson (1723), 2 Ld. Raym. 1355 341
———— *v.* ———— (1724), 11 East, 84, n. 343
Macher *v.* Foundling Hospital (1813), 1 Ves. & B. 188 345
M'Intosh and the Pontypridd Improvement Company (Arbitration between), *Re* (1891), 8 T. L. R. 128 340

PAGE
Mack *v.* Petter (or Peter) (1872), L. R. 14 Eq. 431; 41 L. J. (CH.) 781; 20 W. R. 964 143, 165
Mackalley's Case (1611), 9 Co. Rep. 65 b 258, 274
Mackay *v.* Commercial Bank of New Brunswick (1874), L. R. 5 P. C. 394; 43 L. J. (P. C.) 31; 30 L. T. 180; 22 W. R. 473 387, 388
Mackenzie *v.* Sligo and Shannon Rail. Co. (1850), 9 C. B. 250 396
McKeown *v.* Joint Stock Institute, Ltd., [1899] 1 Ch. 671; 68 L. J. (CH.) 390; 80 L. T. 641; 6 Mans. 338 397, 554
Mackereth *v.* Glasgow and South Western Rail. Co. (1873), L. R. 8 Ex. 149; 42 L. J. (EX. CH.) 82; 28 L. T. 167; 21 W. R. 339 395
Mackley *v.* Chillingworth (1877), 2 C. P. D. 273; 46 L. J. (C. P.) 484; 36 L. T. 514; 25 W. R. 650 682
Macleur *v.* Macleur (1868), L. R. 1 P. & D. 604; 37 L. J. (P.) 68 . . 645, 646
Macklin *v.* Richardson (1770), 2 Amb. 694 152
Macmillan *v.* Khan Shamsal Bahadur Ulama M. Zaka (1895), 19 Ind. L. R. Bombay, 557 149
——— & Co. *v.* Dent, [1907] 1 Ch. 107; 76 L. J. (CH.) 136; 95 L. T. 730; 23 T. L. R. 45, C. A. 137, 138, 139, 140
McMullen *v.* Hickman (Sir Alfred) Steamship Co., Ltd. (1902), 71 L. J. (CH.) 766; 18 T. L. R. 650 350
Mahony *v.* East Holyford Mining Co. (1875), L. R. 7 H. L. 869; 33 L. T. 338; Ir. R. 9 C. L. 306 361
Major *v.* Brandwood (1632), Cro. Car. 260; W. Jo. 300 38
Malley *v.* Shepley (1892), 62 L. J. (Q. B.) 31; 5 R. 73; 68 L. T. 294; 41 W. R. 63 605, 606
Mallinson *v.* Siddle (1870), 39 L. J. (C. H.) 426; 18 W. R. 569 64
Maltby *v.* Murrells (1860), 5 H. & N. 813; 29 L. J. (EX.) 377; 2 L. T. 362 . 447
Malthouse Close, *Re* (1890), 89 L. T. Jo. 325 684
Manchester Corporation *v.* Williams, [1891] 1 Q. B. 94; 54 J. P. 712; 60 L. J. (Q. B.) 23; 63 L. T. 805; 39 W. R. 302 390
Manchester, Sheffield and Lincolnshire Rail. Co. *v.* Worksop Board of Health (1856), 23 Beav. 198; 26 L. J. (CH.) 345; 3 Jur. (N. S.) 304; 5 W. R. 279 . 304
Mander *v.* Ridgway, [1898] 1 Q. B. 501; 67 L. J. (Q. B.) 335; 78 L. T. 118; 14 T. L. R. 230; 46 W. R. 366 604
Mann *v.* Edinburgh Northern Tramways Co., [1893] A. C. 69; 57 J. P. 245; 62 L. J. (P. C.) 74; 1 R. 86; 68 L. T. 96 321
Manners *v.* Blair (1828), 3 Bli. (N. S.) 391 173
Manning *v.* Andrews (1576), 1 Leon. 260 55
Mansell, *Ex parte*, *Re* Chillington Iron Co. *See* Chillington Iron Co., *Re*, *Ex parte* Mansell.
——— *v.* Valley Printing Co. and Rankine, [1908] 1 Ch. 567; 77 L. J. (CH.) 397; 98 L. T. 432; 24 T. L. R. 311; [1908] 2 Ch. 441; 77 L. J. (CH.) 742; 99 L. T. 464; 24 T. L. R. 802; 52 Sol. Jo. 660, C. A. . . 136, 137, 163, 188, 191, 192
Maple & Co. *v.* Junior Army and Navy Stores (1882), 21 Ch. D. 369; 52 L. J. (CH.) 67; 47 L. T. 589; 31 W. R. 70, C. A. 146, 198, 206
Mardiner *v.* Elliot (1788), 2 Term Rep. 746 25, 48, 76
Marsh *v.* Conquest (1864), 17 C. B. (N. S.) 418; 33 L. J. (C. P.) 319; 10 Jur. (N. S.) 989; 10 L. T. 717; 12 W. R. 1006 . 179, 181, 182, 185, 449
——— *v.* Dewes (1853), 17 Jur. 558 430
Marshall *v.* Broadhurst (1831), 1 Tyr. 349; 1 Cr. & J. 403; 9 L. J. (O. S.) (EX.) 105 157
——— & Co., Ltd. *v.* Bull (A. H.), Ltd. (1901), 85 L. T. 77; 17 T. L. R. 684, C. A. 145, 161, 163, 198, 203, 204, 206
Marshall's Valve Gear Co., Ltd. *v.* Manning, Wardle & Co., Ltd., [1909] 1 Ch. 267; 78 L. J. (CH.) 46; 100 L. T. 65; 25 T. L. R. 69 307
Martin, *Re* (1904), 90 L. T. 264; 20 T. L. R. 257 357, 366
——— *v.* Bannister (1878), 4 Q. B. D. 491; 48 L. J. (Q. B.) 676; 28 W. R. 143, C. A. 433
——— *v.* Treacher (1886), 16 Q. B. D. 505; 50 J. P. 356; 55 L. J. (Q. B.) 209; 54 L. T. 7; 34 W. R. 315, C. A. 199
——— *v.* Wright (1833), 6 Sim. 297 203
Marwood *v.* Waters (1853), 13 C. B. 820 431
Mason *v.* Day (1711), Gilb. (CH.) 77; Prec. Ch. 319 101
——— *v.* Murray (1777), cited 1 East, 360 146
Massey *v.* Burton (1857), 2 H. & N. 597; 27 L. J. (EX.) 101; 3 Jur. (N. S.) 1130; 6 W. R. 108 449
Mathews *v.* Marsland (1858), 27 L. J. (EX.) 148; 6 W. R. 254 489

PAGE
Mathieson *v.* Harrod (1868), L. R. 7 Eq. 270; 38 L. J. (CH.) 139; 19 L. T. 639; 17 W. R. 99 152, 202
Matthew *v.* Osborne (1853), 13 C. B. 919; 22 L. J. (C. P.) 241; 17 Jur. 696; 1 W. R. 151 93
Matthewson *v.* Stockdale (1806), 12 Ves. 270 145
Maund *v.* Monmouth Canal Co. (1842), 4 Man. & G. 452; 11 L. J. (C. P.) 317; 3 Ry. & Can. Cas. 159; Car. & M. 606; 2 Dowl. (N. S.) 113; 5 Scott (N. R.), 457; 6 Jur. 932 386, 387
Maudesley *v.* Maudesley (1868), 18 L. T. 51 443
Mawman *v.* Tegg (1826), 2 Russ. 385 145, 147 166, 167
Maxwell *v.* Hogg (1867), 2 Ch. App. 307; 36 L. J. (CH.) 433; 16 L. T. 130; 15 W. R. 467 144, 153
——— *v.* Somerton (1874), 22 W. R. 313; 30 L. T. 11 147, 165
Mayall *v.* Higbey (1862), 1 H. & C. 148; 31 L. J. (EX.) 329; 8 Jur. (N. S.) 622; 6 L. T. (N. S.) 362; 10 W. R. 631 189, 190
Mayhew (or Murray) *v.* Maxwell (1860), 3 L. T. (N. S.) 466; 1 John. & H. 312; 8 W. R. 118 148, 149, 154
Mayo *v.* Burgess (1855), 4 E. & B. 655; 24 L. J. (Q. B.) 67; 1 Jur. (N. S.) 473 . 602
Medhurst *v.* Golder (1867), 16 L. T. 50 444
Medows, *Re*, Norie *v.* Bennett, [1898] 1 Ch. 300; 67 L. J. (CH.) 145; 78 L. T. 13; 46 W. R. 497 26, 84
Medwin, *Ex parte* (1853), 1 E. & B. 609; 22 L. J. (Q. B.) 169; 17 Jur. 1178 . 613
Meek *v.* Witherington (1892), 57 J. P. 7; 67 L. T. 122 602
Melbourne Banking Corporation *v.* Brougham (1878), 4 App. Cas. 156; 48 L. J. (P. C.) 12; 48 L. T. 1 384
Meller *v.* Staples (1669), 1 Mod. Rep. 6 372
Melliss *v.* Shirley Local Board (1885), 14 Q. B. D. 911; 54 L. J. (Q. B.) 408; 52 L. T. 544; reversed (1885) 16 Q. B. D. 446, C. A. 381, 386
Melville *v.* Mirror of Life Co., [1895] 2 Ch. 531; 65 L. J. (CH.) 41; 13 R. 852; 73 L. T. 334 193, 194
Melwich *v.* Luter (1588), 4 Co. Rep. 26 a 5, 12, 20
Menier *v.* Hooper's Telegraph Works (1874), 9 Ch. App. 350; 43 L. J. (CH.) 330; 30 L. T. 209; 22 W. R. 396 347, 394
Mercer *v.* Denne, [1904] 2 Ch. 534; affirmed [1905] 2 Ch. 538; 74 L. J. (CH.) 723; 93 L. T. 412; 70 J. P. 65; 54 W. R. 303; 3 L. G. R. 1293, C. A. 9
——— *v.* Lawrence (1878), 26 W. R. 506 554
Merchants of the Staple of England Corporation *v.* Bank of England (Governor and Company) (1887), 21 Q. B. D. 160; 52 J. P. 580; 57 L. J. (Q. B.) 418; 36 W. R. 880, C. A. 310, 341, 342, 343
Merest *v.* James (1821), 6 Madd. 118 73, 111
Mersey Dock and Harbour Board Trustees *v.* Gibbs (1866), L. R. 1 H. L. 93; 11 H. L. Cas. 686; 35 L. J. (EX.) 225; 12 Jur. (N. S.) 571; 14 L. T. 677; 14 W. R. 872 304, 389
Merttens *v.* Hill, [1901] 1 Ch. 842; 65 J. P. 312; 70 L. J. (CH.) 489; 84 L. T. 260; 49 W. R. 408; 17 T. L. R. 289 18, 68
Metropolitan Asylum District *v.* Hill (1881), 6 App. Cas. 193; 45 J. P. 664; 50 L. J. (Q. B.) 353; 44 L. T. 653; 29 W. R. 617 387, 389
Metropolitan Bank *v.* Pooley (1885), 10 App. Cas. 210; 49 J. P. 756; 54 L. J. (Q. B.) 449; 53 L. T. 163; 33 W. R. 709 387, 391
Metropolitan Saloon Omnibus Co. *v.* Hawkins (1859), 4 H. & N. 87; 28 L. J. (EX.) 201; 5 Jur. (N. S.) 226; 7 W. R. 265 390
Metzler *v.* Wood (1878), 8 Ch. D. 606; 47 L. J. (CH.) 625; 38 L. T. 544; 26 W. R. 577, C. A. 144, 165, 187
Mexborough (Earl) *v.* Bower (1843), 7 Beav. 127 166
Michell *v.* Hender (1854), 23 L. J. (Q. B.) 273; 18 Jur. 430; 2 C. L. R. 460; 2 W. R. 411 449
Michiels *v.* Empire Palace, Ltd., [1892] W. N. 38 461
Middlesex Deputy Coroner, *Ex parte* (1861), 6 H. & N. 501; 30 L. J. (EX.) 77; 7 Jur. (N. S.) 103; 3 L. T. 754; 9 W. R. 281 250
Middleton *v.* Cater (1793), 4 Bro. C. C. 409 370
Midwood & Co., Ltd. *v.* Manchester Corporation, [1905] 2 K. B. 597; 69 J. P. 348; 74 L. J. (K. B.) 884; 93 L. T. 525; 21 T. L. R. 667; 3 L. G. R. 1136; 54 W. R. 37, C. A. 389
Milfax *v.* Baker (1661), 1 Lev. 26; 3 Salk. 100 53
Mill *v.* Hawker (1874), L. R. 9 Exch. 309; 43 L. J. (EX.) 129; 30 L. T. 894; 23 W. R. 26; affirmed (1875), L. R. 10 Exch. 92; 44 L. J. (EX.) 49; 33 L. T. 177; 23 W. R. 348 386, 387

PAGE
Millar *v.* Taylor (1769), 4 Burr. 2303 144, 173, 174
—— and Lang, Ltd. *v.* Polak, [1908] 1 Ch. 433 ; 77 L. J. (CH.) 241 ; 98 L. T. 378 ; 24 T. L. R. 228 191, 195, 197
Millett *v.* Ballard, [1904] 2 K. B. 593 ; 73 L. J. (K. B.) 989 ; 91 L. T. 23 ; 20 T. L. R. 693 ; 52 W. R. 675, C. A. 602
Mills *v.* Barber (1836), 1 M. & W. 425 ; 5 Dowl. P. C. 77 ; 2 Gale, 5 ; 5 L. J. (EX.) 204 532
Mills' Trusts, *Re* (1887), 37 Ch. D. 312 ; 57 L. J. (CH.) 466 ; 58 L. T. 620 ; 36 W. R. 393 88
Milward *v.* Thatcher (1787), 2 Term Rep. 81 ; 1 R. R. 431 332
——— & Co., *Re*, [1900] 1 Ch. 405 ; 69 L. J. (CH.) 247 ; 82 L. T. 339, C. A. . 600
Minet *v.* Morgan (1871), L. R. 11 Eq. 284 ; 24 L. T. 120 ; 19 W. R. 374 . . 16
Minton *v.* Kirwood (1866), L. R. 1 Eq. 449 ; 13 L. T. 743 ; 14 W. R. 274 ; 12 Jur. (N. S.) 86 113
——— *v.* Kirwood (1868), 3 Ch. App. 614 ; 37 L. J. (CH.) 606 ; 18 L. T. 781 ; 16 W. R. 991 112
Mirehouse *v.* Rennell (1833), 1 Cl. & Fin. 527, H. L. 306, 314, 321
Mitchel *v.* Neale (1755), 2 Ves. Sen. 679 97
Mitchell *v.* Hender (1854), 2 C. L. R. 460 ; 23 L. J. (Q. B.) 273 ; 18 Jur. 430 ; 3 W. R. 411 449
——— *v.* Reynolds (1712), 10 Mod. Rep. 130 ; 1 Smith, L. C. (11th ed.), 406 337, 339
Mitchelstown Inquisition, *Re* (1888), 22 L. R. Ir. 279 239, 260, 285
Moffat and Paige *v.* Gill & Sons (1902), 86 L. T. 465 ; 18 T. L. R. 547 ; 50 W. R. 528, C. A. 146
Mogg *v.* Hodges (1759), 2 Ves. Sen. 52 370
Molloy *v.* Mutual Reserve Life Insurance Co. (1906), 94 L. T. 756 ; 22 T. L. R. 525, C. A. 392
Monaghan *v.* Taylor (1886), 2 T. L. R. 685 185
Monckton *v.* Payne, [1899] 2 Q. B. 603 ; 68 L. J. (Q. B.) 951 ; 81 L. T. 204 ; 48 W. R. 44 ; 15 T. L. R. 531 33
Monke *v.* Butler (1614), 1 Roll. Rep. 83 306
Montague (Lord) *v.* Dudman (1751), 2 Ves. Sen. 396 42
Montague's (Lady) Case (1612), Cro. Jac. 301 50
Montgomery *v.* Liebenthal, [1898] 1 Q. B. 487 ; 67 L. J. (Q. B.) 313 ; 78 L. T. 211 ; 14 T. L. R. 201 ; 46 W. R. 292, C. A. 395
Moody *v.* Steward (1870), L. R. 6 Exch. 35 ; 40 L. J. (EX.) 25 ; 23 L. T. 465 ; 19 W. R. 161 440
Moon *v.* Lawler (1903), 38 L. J. 231 487
Moore *v.* Brompton County Court (High Bailiff) (1893), 62 L. J. (Q. B.) 498 ; 57 J. P. 742 ; 5 R. 427 ; 69 L. T. 140 ; 41 W. R. 557 424
—— *v.* Clarke (1842), 9 M. & W. 692 ; 6 Jur. 648 204
—— *v.* Gamgee (1890), 25 Q. B. D. 244 ; 59 L. J. (Q. B.) 505 ; 38 W. R. 669 . 614
—— *v.* Metropolitan Rail. Co. (1872), L. R. 8 Q. B. 36 ; 42 L. J. (Q. B.) 23 ; 27 L. T. 579 ; 21 W. R. 145 387, 388
—— *v.* Moore (1755), 2 Ves. Sen. 601 ; Amb. 279 68, 71
—— *v.* Pinnick (1901), 70 L. J. (K. B.) 471 607
——, Nettlefold & Co. *v.* Singer Manufacturing Co., [1904] 1 K. B. 820 ; 68 J. P. 369 ; 73 L. J. (K. B.) 457 ; 90 L. T. 469 ; 20 T. L. R. 366 ; 52 W. R. 385, C. A. 609
Morgan, *Re*, *Ex parte* Board of Trade, [1904] 1 K. B. 68 ; 72 L. J. (K. B.) 948 ; 89 L. T. 452 ; 20 T. L. R. 2 ; 52 W. R. 79 ; 10 Mans. 358 . . 559
——— *v.* Rees (1881), 6 Q. B. D. 508 ; 50 L. J. (Q. B.) 491 ; 44 L. T. 133 ; 29 W. R. 345, C. A. 529, 604
Morley's (Lord) Case (1666), Kel. 53 ; *sub nom.* Bromwich's Case (1666), 1 Lev. 180 291
"Morocco Bound" Syndicate, Ltd. *v.* Harris, [1895] 1 Ch. 534 ; 64 L. J. (CH.) 400 ; 72 L. T. 415 ; 43 W. R. 393 142
Morris *v.* Ashbee (1868), L. R. 7 Eq. 34 ; 19 L. T. 555 145
——— *v.* Colman (1812), 18 Ves. 437 158
——— *v.* Smith (1585), Cro. Eliz. 38 ; Owen, 138 ; 1 Leon. 26 20
——— *v.* Wright (1870), 5 Ch. App. 279 ; 22 L. T. 78 ; 18 W. R. 327 . . 146
Morriston Tinplate Co. *v.* Brooker Dore Co., [1908] 1 K. B. 403 ; 77 L. J. (K. B.) 197 ; 98 L. T. 219 ; 24 T. L. R. 224 ; 52 Sol. Jo. 210 525
Morse *v.* Faulkener (1792), 1 Anst. 11 ; 3 Swan. 429, n. 102
Mortimers' Case (1629), Het. 150 107
Morton *v.* Copeland (1855), 16 C. B. 517 ; 25 L. J. (C. P.) 169 ; 1 Jur. (N. S.) 979 ; 3 W. R. 593 181
Mose *v.* St. Leonards Gas Co. (1864), 4 F. & F. 324 389

PAGE
Mott *v.* Buxton (1802), 7 Ves. 201 60, 61
Moul *v.* Coronet Theatre (1903), *Times*, February 4, 1903 187
——— *v.* Groenings, [1891] 2 Q. B. 443 ; 60 L. J. (Q. B.) 715 ; 65 L. T. 327 ; 39 W. R. 691, C. A. 172
Mountague (Earl) *v.* Preston (Lord) (1690), 2 Vent. 170 61
Mountnoy *v.* Collier (1853), 1 E. & B. 630; 22 L. J. (Q. B.) 124 ; 17 Jur. 503 ; 1 W. R. 179 430
Mozley *v.* Alston (1847), 1 Ph. 790 303, 347, 394
Muddock *v.* Blackwood, [1898] 1 Ch. 58 ; 67 L. J. (CH.) 6 ; 77 L. T. 493 . . 167
Muggleton *v.* Barnett (1857), 2 H. & N. 653 ; 27 L. J. (EX.) 125 ; 6 W. R. 182 ; 4 Jur. (N. S.) 139 9, 86
Muirhead *v.* Direct United States Cable Co. (1879), 27 W. R. 708 395
Mulliner *v.* Midland Rail. Co. (1879), 11 Ch. D. 611 ; 48 L. J. (CH.) 258 ; 40 L. T. 121 ; 27 W. R. 330 375, 376
Munday *v.* Thames Ironworks Co. (1883), 10 Q. B. D. 59 ; 52 L. J. (Q. B.) 119 ; 47 L. T. 351 611
Mungean *v.* Wheatley (1851), 6 Exch. 88 ; 2 L. M. & P. 30 ; 20 L. J. (EX.) 106 ; 15 Jur. 110 611
Munifas *v.* Baker (1661), 1 Keb. 25 ; 1 Lev. 26 102
Munkittrick *v.* Perryman and Hands (1896), 74 L. T. 149 302
Munshi Shaik Abdurruhman *v.* Mahomed Shirazi (1890), 14 Indian Law Reports, Bombay Series, 586 149
Murgatroyd *v.* Wright, [1907] 2 K. B. 333 ; 76 L. J. (K. B.) 747 ; 97 L. T. 108 ; 23 T. L. R. 517 ; 14 Mans. 201 556, 558
Murless *v.* Franklin (1818), 1 Swan. 13 74
Murray *v.* Benbow (1822), 1 Jac. 474, n. 144
——— *v.* Bogue (1852), 1 Drew. 353 ; 22 L. J. (CH.) 457 ; 17 Jur. 219 ; 1 W. R. 109 149, 154
——— *v.* East India Co. (1821), 5 B. & Ald. 204 362
——— *v.* Elliston (1822), 5 B. & Ald. 657 ; 1 Dow. & Ry. (K. B.) 299 . . . 177
——— *v.* Heath (1831), 1 B. & Ad. 804 ; 8 L. J. (O. S.) (K. B.) 111 . . . 190
Murtagh *v.* Barry (1890), 24 Q. B. D. 632 ; 59 L. J. (Q. B.) 388 ; 38 W. R. 526 . 548, 550, 602, 604
Musgrave *v.* Nevinson (1723), 2 Ld. Raym. 1358 342
Myers *v.* Hodgson (1876), 1 C. P. D. 609 ; 45 L. J. (C. P.) 603 ; 34 L. T. 881 ; 24 W. R. 827 28, 125
Mylam *v.* Market Harborough Advertiser Co., [1905] 1 K. B. 708 ; 74 L. J. (K. B.) 205 ; 92 L. T. 94 ; 21 T. L. R. 201 ; 53 W. R. 478 377

N.

NANSON *v.* Barnes (1869), L. R. 7 Eq. 253 ; 20 L. T. 154 ; 17 W. R. 429 . 6, 87, 109
Nash, *Ex parte* (1850), 15 Q. B. 92 ; 19 L. J. (Q. B.) 296 ; 14 Jur. 574 . . 311
——— *v.* Derby (Earl) (1705), 2 Vern. 537 48, 52
Natal Land and Colonisation Co. *v.* Pauline Colliery Syndicate, [1904] A. C. 120 ; 73 L. J. (P. C.) 22 ; 89 L. T. 678 ; 11 Mans. 29 379
National Bank of St. Charles *v.* De Bernales (1825), 1 C. & P. 569 ; 1 R. & M. 193 393
National Dwellings Society *v.* Sykes, [1894] 3 Ch. 159 ; 63 L. J. (CH.) 906 ; 8 R. 758 ; 42 W. R. 696; 1 Mans. 457 347
National Guaranteed Manure Co. *v.* Donald (1859), 4 H. & N. 8 ; 28 L. J. (EX.) 185 358, 359
National Motor Mail Coach Co., Ltd., *Re*, Clinton's Claim, [1908] 2 Ch. 515 ; 77 L. J. (CH.) 790, C. A. 379
National Permanent Benefit Building Society, *Re*, *Ex parte* Williamson (1869), 5 Ch. App. 309 ; 34 J. P. 341 ; 22 L. T. 284 ; 18 W. R. 388 364
National Telephone Co. *v.* Baker, [1893] 2 Ch. 186 ; 57 J. P. 373 ; 62 L. J. (CH.) 699 ; 68 L. T. 283 ; 3 R. 318 389
——————— *v.* Tunbridge Wells Corporation (1900), 85 L. T. 368 ; 17 T. L. R. 459, C. A. 688
Naylor *v.* Cornish (1828), 1 Vern. 311 303, 401
——— *v.* Sharply (1675), 1 Mod. Rep. 198 ; 2 Mod. Rep. 23 ; Freem. 1 ; Staund. P. C. 53 249
——— and Spendla's Contract, *Re* (1886), 34 Ch. D. 217 ; 56 L. J. (CH.) 453 ; 56 L. T. 132 ; 35 W. R. 219, C. A. 34
Neale *v.* Harmer (1897), 13 T. L. R. 209 164
——— *v.* Jackson (1595), Cro. Eliz. 395 ; 4 Co. Rep. 26 b 53

PAGE
Neath Building Society *v.* Luce (1889), 43 Ch. D. 158; 59 L. J. (CH.) 3; 61 L. T. 611; 38 W. R. 122 364
Neptune Steam Navigation Co. *v.* Sclater, Delano (The), [1895] P. 40; 64 L. J. (ADM.) 8; 71 L. T. 544; 6 R. 810; 43 W. R. 65; 7 Asp. M. L. C. 523, C. A. 603
Nethersole *v.* Bell (1903), *Times*, July 31, 1903 183
Nevil's (Sir H.) Case (1612), 11 Co. Rep. 18 a; Cro. Jac. 327; 2 Bulst. 135; Jenk. 340 3
Nevill *v.* Fine Arts and General Insurance Co., [1895] 2 Q. B. 156; 59 J. P. 371; 64 L. J. (Q. B.) 681; 72 L. T. 525; 14 R. 587, C. A. 387
New Callao Co., *Re* (1882), 22 Ch. D. 484; 52 L. J. (CH.) 283; 48 L. T. 251; 31 W. R. 185, C. A. 606
New College, Oxford, Case (1566), 2 Dyer, 247 a 346
New Par Consols (No. 2), *Re*, [1898] 1 Q. B. 669; 67 L. J. (Q. B.) 598; 78 L. T. 312; 46 W. R. 369; 5 Mans. 277, C. A. 610
New Windsor Corporation *v.* Taylor, [1899] A. C. 41; 63 J. P. 164; 68 L. J. (Q. B.) 87; 79 L. T. 450; 15 T. L. R. 67 9
New Zealand Shipping Co., Ltd. *v.* Stephens (1907), 24 T. L. R. 172, C. A. . 312
Newbery, *Re* (1774), Lofft, 775 147
Newbiggin-by-the-Sea Gas Co. *v.* Armstrong (1880), 13 Ch. D. 310; 49 L. J. (CH.) 231; 41 L. T. 637; 28 W. R. 217, C. A. 394
Newby *v.* Colt's Patent Firearms Co. (1872), L. R. 7 Q. B. 293; 41 L. J. (Q. B.) 148; 26 L. T. 167; 21 W. R. 339 395
Newcastle-upon-Tyne Corporation *v.* A.-G. (1845), 12 Cl. & Fin. 402, H. L. . 375
——— *v.* A.-G., [1892] A. C. 568; 56 J. P. 836; 62 L. J. (Q. B.) 72; 67 L. T. 728; 1 R. 31 379
Newcastle-upon-Tyne Pilots *v.* Bradley (1852), 2 E. & B. 428; 16 Jur. 494 . 318
Newcombe *v.* de Roos (1859), 2 E. & E. 271; 29 L. J. (Q. B.) 4; 6 Jur. (N. S.) 68; 8 W. R. 5 451
Newling *v.* Francis (1789), 3 Term Rep. 189 319, 354
Newmark *v.* National Phonograph Co. and Edison Manufacturing Co. (1907), 23 T. L. R. 439 143
Newport Marsh Trustees, *Ex parte* (1848), 16 Sim. 346; 18 L. J. (CH.) 49; 12 Jur. 932 304, 320
Newsum, Sons & Co., Ltd. *v.* James, [1909] W. N. 112 563
Newton *v.* Cowie (1827), 4 Bing. 234; 12 Moore, 457; 5 L. J. (O. S.) (C. P.) 159 . 202, 203, 205
——— *v.* Travers (1696), 3 Salk. 103 307
Nicholls *v.* Amalgamated Press (1907), unreported, October 28, 1907 . . . 159
——— *v.* Parker (1902), 18 T. L. R. 459, C. A. 199
Nicholson *v.* Bradfield Union Guardians (1866), 7 B. & S. 747; 35 L. J. (Q. B.) 176; L. R. 1 Q. B. 620; 14 L. T. 830; 14 W. R. 731 384
Nicols *v.* Pitman (1884), 26 Ch. D. 374; 48 J. P. 549; 53 L. J. (CH.) 552; 50 L. T. 254; 32 W. R. 631 152, 163, 164
Nightingale *v.* Bridges (1690), 1 Show. 135; Carth. 131; Holt (K. B.), 473 . . 316
Nisbet & Co. *v.* Golf Agency (1907), 23 T. L. R. 370 137, 145
Nixon *v.* Burt (1817), 1 Moore, 413; 7 Taunt. 682 342
Noel *v.* Weston (1821), 6 Madd. 50 97
Norburn *v.* Hilliam (1870), L. R. 5 C. P. 129; 39 L. J. (C. P.) 183; 22 L. T. 67; 18 W. R. 602 615
Norey *v.* Keep, [1909] 1 Ch. 561; 78 L. J. (CH.) 334; 25 T. L. R. 289 . 323, 324
Norman *v.* Marchant (1852), 7 Exch. 723; 21 L. J. (EX.) 256 451
Norris *v.* Norris (1639), 2 Roll. Abr. 72; 1 Cru. Dig. 304 42
——— *v.* Staps (1616), Hob. 210 334, 338
North *v.* Holroyd (1868), L. R. 3 Exch. 69; 37 L. J. (EX.) 42; 17 L. T. 57 . 460, 602
——— *v.* Strafford (Earl) (1732), 3 P. Wms. 149 58, 59, 281
North of England Steamship Co., *Re*, [1905] 2 Ch. 15; 74 L. J. (CH.) 404; 93 L. T. 1; 53 W. R. 499; 21 T. L. R. 481; 12 Mans. 174, C. A. 343
North Western Rail. Co. *v.* Sharp (1854), 10 Exch. 451; 24 L. J. (EX.) 44 . . 63
Northampton Coal, Iron, and Waggon Co. *v.* Midland Waggon Co. (1878), 7 Ch. D. 500; 38 L. T. 82; 26 W. R. 485, C. A. 392
Northey Stone Co. *v.* Gidney, [1894] 1 Q. B. 99; 10 R. 16; 70 L. T. 82; 42 W. R. 99, C. A. 451
Northumberland (Duke) *v.* Houghton (1870), L. R. 5 Exch. 127; 39 L. J. (EX.) 66; 22 L. T. 49; 18 W. R. 495 5
Northwick (Lord) *v.* Stanway (1805), 6 East, 56; 3 Bos. & P. 346; 2 Smith, L. C. (11th ed.), 225 32

PAGE
Norvell *v.* Worcester Corporation (1854), 9 Exch. 457 361
Norwich's (Dean and Chapter) Case (1598), 3 Co. Rep. 73 a 397
Nottage *v.* Jackson (1883), 11 Q. B. D. 627 ; 49 L. T. 339 ; 52 L. J. (Q. B.) 760 ; 32 W. R. 106, C. A. 140, 153, 180, 192, 194
Nottingham Coroner Election, *Re* (1828), 7 L. J. (O. S.) (CH.) 61 219
Nottingham Corporation, *Re*, [1897] 2 Q. B. 502 ; 61 J. P. 725 ; 66 L. J. (Q. B.) 883 ; 77 L. T. 210 14, 317
Nottingham Permanent Benefit Building Society *v.* Thurstan, [1903] A. C. 6 ; 67 J. P. 129 ; 72 L. J. (CH.) 134 ; 87 L. T. 529 ; 19 T. L. R. 54 ; 51 W. R. 273 322
Novello *v.* Sudlow (1852), 12 C. B. 177 ; 21 L. J. (C. P.) 169 ; 16 Jur. 689 . 163, 164, 165, 169
Noyce, *Re*, [1892] 1 Q. B. 642 ; 56 J. P. 564 ; 61 L. J. (Q. B.) 628 ; 66 L. T. 331 ; 40 W. R. 371, C. A. 669
Nutter *v.* Messageries Maritimes (1885), 54 L. J. (Q. B.) 527 395

O.

OAKLEY *v.* Smith (1759), Amb. 369 ; 1 Eden, 261 73
Odiham *v.* Smith (1592), Cro. Eliz. 589 43
Ogston *v.* Aberdeen District Tramways Co., [1897] A. C. 111 ; 61 J. P. 436 ; 66 L. J. (P. C.) 1 ; 75 L. T. 633 389
Oldenshaw *v.* Governesses Benevolent Institution, *Re* Bradley. *See* Bradley, *Re*, Oldenshaw *v.* Governesses Benevolent Institution.
Oliver *v.* Oliver (1861), 11 C. B. (N. S.) 139 ; 31 L. J. (C. P.) 4 ; 8 Jur. (N. S.) 512 ; 5 L. T. 287 ; 10 W. R. 18 138
Osborn *v.* Carden (1565), 1 Plowd. 293. 83
Osborne *v.* Hamburg (1875), 1 Ex. D. 48 ; 45 L. J. (EX.) 65 ; 33 L. T. 534 ; 24 W. R. 161 439
——— *v.* Sture (1686), 2 Lutw. fo. 1361 ; 3 Salk. 181 ; 3 Mod. Rep. 230 . . 37
Osgood *v.* Nelson (1872), L. R. 5 H. L. 636 ; 41 L. J. (Q. B.) 329 . . . 331, 412
Otway *v.* Hudson (1706), 2 Vern. 585 71
Outhwaite *v.* Hudson (1852), 7 Exch. 380 ; 21 L. J. (EX.) 151 ; 16 Jur. 430 . 609
Owen *v.* De Beauvoir (1847), 16 M. & W. 547 ; 11 Jur. 458 ; affirmed (1850) 5 Exch. 166 ; 19 L. J. (EX.) 177 45
——— *v.* Wynn (1878), 9 Ch. D. 29 ; 38 L. T. 623 ; 26 W. R. 944, C. A. . . 16
——— and Ashworth's Claim, *Re* Bank of Syria. *See* Bank of Syria, *Re*, Owen and Ashworth's Claim.
Owens *v.* Breese (1851), 6 Exch. 916 ; 2 L. M. & P. 486 ; 20 L. J. (EX.) 359 ; 15 Jur. 582 411
——— *v.* Woosman (1868), L. R. 3 Q. B. 469 ; 9 B. & S. 243 ; 37 L. J. (Q. B.) 159 ; 18 L. T. 357 ; 16 W. R. 932 441
Oxford and Cambridge Universities *v.* Richardson (1802), 6 Ves. 689 . . . 173
Oxford Corporation *v.* Crow, [1893] 3 Ch. 535 ; 8 R. 279 ; 69 L. T. 228 ; 42 W. R. 200 380, 381
Oxley *v.* Watts (1785), 1 Term Rep. 12 ; 1 R. R. 133 6

P.

PADDINGTON CHARITIES, *Re* (1837), 8 Sim. 629 ; 7 L. J. (CH.) 34 ; 2 Jur. 344 . 66, 105
Padwick *v.* Tyndale (1858), 1 E. & E. 184 ; 28 L. J. (Q. B.) 90 ; 5 Jur. (N. S.) 676 ; 7 W. R. 53 43, 124
Page *v.* R. (1792), 2 Ridg. Parl. Rep. 445 320, 322, 351
——— *v.* Wisden (1869), 20 L. T. 435 ; 17 W. R. 483 143, 152
Page's Case (1623), Cro. Jac. 671 76
Pain *v.* Bowden, [1896] 2 Q. B. 301 ; 65 L. J. (Q. B.) 530 ; 75 L. T. 102 ; 45 W. R. 48 598
Paine *v.* Ryder (1857), 24 Beav. 151 21
——— *v.* Strand Union Guardians (1846), 8 Q. B. 326 ; 15 L. J. (M. C.) 89 ; 10 Jur. 308 385
Palmer *v.* Caledonian Rail. Co., [1892] 1 Q. B. 823 ; 66 L. T. 771 ; 40 W. R. 562, C. A. 450
——— *v.* Roberts (1873), 29 L. T. 403 ; 22 W. R. 577, n. 441
Palomares, The (1885), 10 P. D. 36 ; 54 L. J. (ADM.) 54 ; 52 L. T. 57 ; 33 W. R. 616 ; 5 Asp. M. L. C. 343. 421
Paramore *v.* Greenslade (1853), 1 Sm. & G. 541 ; 23 L. J. (CH.) 34 ; 17 Jur. 1064 107

PAGE
Parker *v.* Combleford (1599), Cro. Eliz. 725 39
——— *v.* Gage (1689), 1 Show. 81; Holt (K. B.), 337 37
——— *v.* Kett (1701), 1 Salk. 95; 3 Salk. 124; Holt (K. B.), 221; 12 Mod. Rep. 467; 1 Ld. Raym. 658; Com. 84 62
——— *v.* South Eastern Rail. Co. (1853), 1 W. R. 316 43, 129
——— *v.* Turner (1687), 1 Vern. 458 111
Parkin *v.* Radcliffe (1799), 1 Bos. & P. 234 44
Parnell, *Ex parte* (1820), 1 Jac. & W. 451 251, 252, 253
Parrott *v.* Palmer (1834), 3 My. & K. 632 22
——— *v.* Watts (1877), 37 L. T. 755; 47 L. J. (C. P.) 79 3, 85
Parsons *v.* Gillespie, [1898] A. C. 239; 67 L. J. (P. C.) 21; 15 R. P. C. 57; 14 T. L. R. 142 165
Parton *v.* Mason (1561), Dyer, 199 b 44
Partridge *v.* Elkington (1870), L. R. 6 Q. B. 82; 40 L. J. (Q. B.) 49; 19 W. R. 385 415
Pasley, *Ex parte* (1842), 3 Dr. & War. 34 254
Passingham *v.* Pitty (1855), 17 C. B. 299; 25 L. J. (C. P.) 4; 2 Jur. (N. S.) 837; 4 W. R. 122 66, 67, 368
Passingham's Case (1855), 17 C. B. 299 66
Paston *v.* Utbert (1629), Litt. 264; *sub nom.* Paston *v.* Manne, Hut. 102; Het. 5 51
Patent File Co., *Re*, *Ex parte* Birmingham Banking Co. (1870), 6 Ch. App. 83; 40 L. J. (CH.) 190; 19 W. R. 193 363
Patent Ivory Manufacturing Co., *Re*, Howard *v.* Patent Ivory Manufacturing Co. (1888), 38 Ch. D. 156; 57 L. J. (CH.) 878; 58 L. T. 395; 36 W. R. 801. 363
Patent Wood Keg Syndicate *v.* Pearse, [1906] W. N. 164 341
Pater, *Ex parte* (1864), 5 B. & S. 299; 9 Cox, C. C. 544; 33 L. J. (M. C.) 142; 10 Jur. (N. S.) 972; 10 L. T. 376; 12 W. R. 823 616
——, *Re* (1864), 5 B. & S. 299; 9 Cox, C. C. 544; 33 L. J. (M. C.) 142; 10 Jur. (N. S.) 972; 10 L. T. 376; 12 W. R. 823 289
Paterson *v.* Paterson (1866), L. R. 2 Eq. 31; 35 Beav. 506; 35 L. J. (CH.) 518; 12 Jur. (N. S.) 408; 14 L. T. 320; 14 W. R. 601 34, 88
Payne, *Ex parte* (1862), 6 L. T. 536 213
——— *v.* Barker (1662), O. Bridg. 23 106
——— (David) & Co., Ltd., *Re*, Young *v.* Payne (David) & Co., Ltd., [1904] 2 Ch. 608; 73 L. J. (CH.) 849; 20 T. L. R. 590; 91 L. T. 777; 11 Mans. 437, C. A. 329, 363
Peachey *v.* Somerset (Duke) (1721), 1 Stra. 454 50, 52, 60
Pearce *v.* Bolton, [1902] 2 K. B. 111; 71 L. J. (K. B.) 558; 86 L. T. 530; 18 T. L. R. 516 587
——— *v.* Johns (1897), 41 Sol. Jo. 661, C. A. 612
——— *v.* Winkworth (1873), 28 L. T. 710 435, 462, 603
Pearks, Gunston and Tee, Ltd. *v.* Ward, [1902] 2 K. B. 11; 66 J. P. 774; 71 L. J. (K. B.) 656; 87 L. T. 51; 18 T. L. R. 538; 20 Cox, C. C. 279 . 390, 391
Pears *v.* Wilson (1851), 6 Exch. 833; 2 L. M. & P. 515; 20 L. J. (EX.) 381; 15 Jur. 932 445
Pearson *v.* Glazebrook (1867), L. R. 3 Exch. 27; 37 L. J. (EX.) 15; 17 L. T. 260 437
——— *v.* Wilcock, [1906] 2 K. B. 440; 75 L. J. (K. B.) 717; 95 L. T. 431; 22 T. L. R. 562; 13 Mans. 214, C. A. 561
——— (S.) & Son, Ltd. *v.* Dublin and South Eastern Rail. Co., [1909] A. C. 217 359
Pedlar *v.* Road Block Gold Mines of India, Ltd., [1905] 2 Ch. 427; 74 L. J. (CH.) 753; 93 L. T. 665; 54 W. R. 44; 12 Mans. 422 361
Peel *v.* London and North Western Rail. Co., [1907] 1 Ch. 5; 76 L. J. (CH.) 152; 95 L. T. 897; 23 T. L. R. 85; 14 Mans. 30, C. A. . . 329, 343, 350, 358, 366
Pell *v.* Towers (1600), Noy, 20; Cro. Eliz. 791; Godb. 49 59
Pender *v.* R. (1725), 2 Bro. Parl. Cas. 294 328
Perceval (Lord and Lady) *v.* Phipps (1813), 2 Ves. & B. 19 138
Percival *v.* Pedley (1887), 18 Q. B. D. 635; 35 W. R. 566 429
Perryman's Case (1599), 5 Co. Rep. 84 66
Pertwee *v.* Townsend, [1896] 2 Q. B. 129; 65 L. J. (Q. B.) 659; 75 L. T. 104 . 59
Peruvian Rail. Co., *Re*, Peruvian Rail. Co. *v.* Thames and Mersey Marine Insurance Co. (1867), 2 Ch. App. 617; 36 L. J. (CH.) 864; 16 L. T. 644; 15 W. R. 1002 361, 362
Peter *v.* Knoll (1584), Cro. Eliz. 32 38
Pettu's (Sir John or Sir Thomas) Case (1670), 2 Keb. 705 259
Petty *v.* Evans (1610), 2 Brownl. 40 55
——— *v.* Taylor, [1897] 1 Ch. 465; 66 L. J. (CH.) 209; 75 L. T. 545; 45 W. R. 299 142, 145, 155, 190, 192, 193, 198

PAGE
Pexhall's (Sir Richard) Case (1610), 8 Co. Rep. 83 b 370
Pharmaceutical Society *v.* London and Provincial Supply Association (1880), 5 App. Cas. 151 ; 45 J. P. 20 ; 49 L. J. (Q. B.) 736 ; 43 L. T. 389 ; 28 W. R. 957 357, 391
Phelps and Woodfold *v.* Upton Snodsbury Highway Board (1885), Cab. & El. 524 ; 49 J. P. 408 385
Philip *v.* Pennell, [1907] 2 Ch. 577 ; 76 L. J. (CH.) 663 ; 97 L. T. 386 ; 23 T. L. R. 718 138
Philips *v.* Bury (1694), 2 Term Rep. 346 ; Skin. 447 . . 304, 336, 355, 356, 374
Phillips, *Ex parte* (1836), 1 Har. & W. 660 106
——— *v.* Ball (1859), 29 L. J. (C. P.) 7 ; 6 C. B. (N. S.) 811 ; 6 Jur. (N. S.) 48 ; 7 W. R. 580 10, 74, 89, 108, 110
——— *v.* Phillips (1832), 1 My. & K. 649 ; 1 L. J. (CH.) 214 93
Phypers *v.* Eburn (1836), 3 Bing. (N. C.) 250 ; 3 Scott, 634 ; 2 Hodg. 230 ; 6 L. J. (P.) 20 30, 34, 99
Physicians (College of) *v.* Butler (1632), W. Jo. 261 307
——— *v.* Salmon (1701), Holt (K. B.), 171 ; 2 Salk. 451 . 306, 307
Picard *v.* Hine (1868), 18 L. T. 705 443
Pickering *v.* Stephenson (1872), L. R. 14 Eq. 322 ; 41 L. J. (CH.) 493 ; 26 L. T. 608 ; 20 W. R. 654 346, 361, 365, 393
Pickersgill *v.* Grey (1862), 30 Beav. 352 ; 31 L. J. (CH.) 394 ; 8 Jur. (N. S.) 632 ; 5 L. T. 706 ; 10 W. R. 207 77
Pierpoint *v.* Cartwright (1880), 5 C. P. D. 139 ; 42 L. T. 259 ; 28 W. R. 583 . 604, 608
Pike *v.* Nicholas (1869), 5 Ch. App. 251 ; 39 L. J. (CH.) 435 ; 18 W. R. 321 . 146, 147, 164, 166, 167
—— *v.* White (1791), 3 Bro. C. C. 286 89
Pilkington *v.* Bagshaw (1655), Sty. 450 18
Pincott *v.* Letts (1897), 77 L. T. 160 502, 593
Pinner's Case (1583), Cro. Eliz. 31 275
Piper *v.* Chappell (1845), 14 M. & W. 624 ; 9 Jur. 601 337
—— *v.* Dennis (1691), Holt (K. B.), 170 319
—— *v.* ———, (1698), 12 Mod. Rep. 253 319, 326
Pit *v.* Moore (1681), T. Jo. 153 ; 2 Show. 156 97
Pitman *v.* Hine (1884), 1 T. L. R. 39 163, 166
Pitt Pitts *v.* George & Co., [1896] 2 Ch. 866 ; 66 L. J. (CH.) 1 ; 75 L. T. 320 ; 45 W. R. 164 165, 167
Place *v.* Jackson (1824), 4 Dow. & Ry. (K. B.) 318 ; 2 L. J. (O. S.) (K. B.) 156 . 24
Planché *v.* Braham (1837), 4 Bing. (N. C.) 17 ; 8 C. & P. 68 ; 5 Scott, 242 ; 3 Hodg. 288 ; 7 L. J. (C. P.) 25 ; 1 Jur. 823 186
——— *v.* Colburn (1833), 8 Bing. 14 ; 1 M. & Scott, 51 ; 5 Cr. & P. 58 . . 148
Platt *v.* Jessett (1900), 17 T. L. R. 105 12
—— *v.* Walter (1867), 17 L. T. 159 144, 153
Player *v.* Roberts (1631), W. Jo. 243 23
Playters *v.* Abbott (1833), 2 My. & K. 97 ; 3 L. J. (CH.) 57 35, 106
Pleydell *v.* Gossmoore (1623), Hut. 67 ; Win. 67, 124 6
Plumb *v.* Craker (1886), 16 Q. B. D. 40 ; 55 L. J. (Q. B.) 116 ; 55 L. T. 404 . 589
Podger's (Margaret) Case (1612), 9 Co. Rep. 104 a ; 2 Brownl. 134 ; 1 Brownl. 181 99
Pole *v.* Bright, [1892] 1 Q. B. 603 ; 61 L. J. (Q. B.) 139 ; 65 L. T. 748 ; 40 W. R. 95 602
Pollard *v.* Photographic Co. (1888), 40 Ch. D. 345 ; 58 L. J. (CH.) 251 ; 60 L. T. 418 ; 37 W. R. 266 138, 190, 194
Pollock *v.* Turnock (1857), 1 H. & N. 741 ; 3 Jur. (N. S.) 92 489
Pope *v.* Curl (1741), 2 Atk. 341 138
Poplett *v.* Stockdale (1825), 2 C. & P. 198 ; Ry. & M. 337 144
Poppleton, *Ex parte*, *Re* Lock. *See* Lock, *Re*, *Ex parte* Poppleton.
Portal *v.* Emmens (1876), 1 C. P. D. 664 ; 46 L. J. (C. P.) 179 ; 35 L. T. 882 ; 25 W. R. 235, C. A. 400
Porter *v.* London and Manchester Insurance Co., [1909] 2 K. B. 30 . . 505, 600
Portland (Duke) *v.* Hill (1866), L. R. 2 Eq. 765 ; 35 L. J. (CH.) 439 ; 12 Jur. (N. S.) 286 ; 15 W. R. 38 8, 10, 67
Potter *v.* Great Western Colliery Co. (1894), 10 T. L. R. 380, C. A. . . 610, 611
Poulett (Earl) *v.* Hood (1868), L. R. 5 Eq. 115 17
Poulters' Co. *v.* Phillips (1840), 6 Bing. (N. C.) 314 ; 8 Scott, 593 ; 9 L. J. (C. P.) 190 ; 4 Jur. 124 338
Poulton *v.* London and South Western Rail. Co. (1867), L. R. 2 Q. B. 534 ; 8 B. & S. 616 ; 36 L. J. (Q. B.) 294 ; 17 L. T. 11 ; 16 W. R. 309 . . . 386, 387, 388

PAGE
Poulton & Son, *Ex parte* (1884), 53 L. J. (Q. B.) 320 ; 32 W. R. 648 . . . 156
Powdrell *v.* Jones (1854), 2 Sm. & G. 407 ; 3 Eq. Rep. 63 ; 24 L. J. (CH.) 123 ; 18 Jur. 1111 ; 3 W. R. 32 79, 80
Powel *v.* Milbank (1773), 2 Wm. Bl. 851 306
——— *v.* Peacock (1604), Cro. Jac. 30 25
Powell *v.* Head (1879), 12 Ch. D. 686 ; 48 L. J. (CH.) 731 ; 41 L. T. 70 . . 160
——— *v.* R. (1728), 2 Bro. C. C. 298 354
——— *v.* Roberts (1869), L. R. 9 Eq. 169 ; 39 L. J. (CH.) 44 ; 21 L. T. 451 ; 18 W. R. 84 444
——— *v.* Thomas, [1891] 1 Q. B. 97 ; 63 L. T. 294 ; 41 W. R. 63 . . . 605
Power *v.* Banks, [1901] 2 Ch. 487 ; 66 J. P. 21 ; 70 L. J. (CH.) 700 ; 85 L. T. 376 ; 49 W. R. 679 ; 17 T. L. R. 621 367, 377
——— *v.* Walker (1814), 8 M. & S. 7 ; 4 Camp. 8 202
Poyser *v.* Minors (1881), 7 Q. B. D. 329 ; 50 L. J. (Q. B.) 555 ; 45 L. T. 33 ; 29 W. R. 773, C. A. 617
Prangnell *v.* Prangnell (1893), 62 L. J. (Q. B.) 346 ; 5 R. 275 446
Prankerd *v.* Prankerd (1820), 1 Sim. & St. 1 74
Premier Industrial Bank, Ltd. *v.* Carlton Manufacturing Co., Ltd. and Crabtree, Ltd., [1909] 1 K. B. 106 ; 78 L. J. (K. B.) 103 ; 99 L. T. 810 ; 25 T. L. R. 17 361, 362
Prestney *v.* Colchester Corporation and A.-G. (1882), 21 Ch. D. 111 ; 51 L. J. (CH.) 805 365
Preston *v.* Liverpool, Manchester etc. Rail. Co. (1856), 5 H. L. Cas. 605 ; 25 L. J. (CH.) 421 ; 2 Jur. (N. S.) 241 ; 4 W. R. 383 379
Preston Corporation *v.* Fulwood (1885), 2 T. L. R. 134 360
Price, *Re*, Leighton *v.* Price (1884), 27 Ch. D. 552 ; 51 L. T. 497 ; 32 W. R. 1009 69
——— *v.* Hill (1761), Dick. 344 94
——— *v.* Woodhouse (1849), 3 Exch. 616 ; 18 L. J. (EX.) 271 10, 42
Price's Patent Candle Co., Ltd. *v.* London County Council, [1098] 2 Ch. 526 ; 72 J. P. 429 ; 99 L. T. 571 ; 24 T. L. R. 822, C. A. 389
Primrose Press Agency Co. *v.* Knowles (1886), 2 T. L. R. 404 153
Prince, *Re*, *Ex parte* Graves (1868), 3 Ch. App. 642 ; 16 W. R. 993 199
"Princess Clementine," The, [1897] P. 18 ; 66 L. J. (P.) 23 ; 75 L. T. 695 ; 8 Asp. M. L. C. 222 395
Pritchett *v.* Poole (1897), 76 L. T. 472 607
Prowse *v.* Foot (1725), 2 Bro. Parl. Cas. 289 328
Pryce *v.* Bury (1853), 2 Drew. 41 ; 2 Eq. Rep. 8 ; 17 Jur. 1173 ; 2 W. R. 87 . . 94
Pryor *v.* City Offices Co. (1883), 10 Q. B. D. 504 ; 52 L. J. (Q. B.) 362 ; 48 L. T. 698 ; 31 W. R. 777, C. A. 432
Pugh and Sharman's Case. *See* Hercules Insurance Co., *Re*, Pugh and Sharman's Case.
Pullen *v.* Middleton (Lord) (1753), 9 Mod. Rep. 483 70, 71
Pure Spirit Co. *v.* Fowler (1890), 25 Q. B. D. 235 ; 59 L. J. (Q. B.) 537 ; 63 L. T. 559 ; 38 W. R. 686 392
Pybus *v.* Gibb (1856), 6 E. & B. 902 ; 26 L. J. (Q. B.) 41 ; 3 Jur. (N. S.) 315 ; 5 W. R. 44 423
Pyle Works, *Re* (1890), 44 Ch. D. 534 ; 59 L. J. (CH.) 489 ; 62 L. T. 887 ; 38 W. R. 674 ; 2 Meg. 83, C. A. 363

Q.

QUARTZ HILL GOLD MINING Co. *v.* Eyre (1883), 11 Q. B. D. 674 ; 52 L. J. (Q. B.) 488 ; 19 L. T. 249 ; 31 W. R. 668, C. A. 390
Queens' College, Cambridge, *Ex parte*, (1857), 27 L. J. (CH.) 178 ; 4 Jur. (N. S.) 19 ; 6 W. R. 9 121
———————, *Re* (1828), 5 Russ. 64 346
Queensberry (Duke) *v.* Shebbeare (1758), 2 Eden, 329 138
Queeensbury Industrial Society *v.* Pickles (1865), 3 H. & C. 857 . . . 307

R.

R. *v.* Abell (1823), 3 Dow. & Ry. (K. B.) 390 ; 1 L. J. (O. S.) (K. B.) 250 . 320, 351
— *v.* Agardsley (Lord of the Manor) (1836), 5 Dowl. P. C. 19 106
— *v.* Aldenham (1675), 2 Lev. 152 ; *sub nom* R. *v.* Alderham, 3 Keb. 564 . . 280
— *v.* Allgood (1798), 7 Term Rep. 746 16

PAGE
R. *v.* Amery (1787), 1 Term Rep. 575 ; (1788), 2 Term Rep. 515 ; 1 Anstr. 171 . 314, 317, 400
— *v.* ——— (1790), 2 Bro. Parl. Cas. 336 316
— *v.* Anderson (1701), 12 Mod. Rep. 496 285
— *v.* Andover (Village) (1701), 12 Mod. Rep. 665 324
— *v.* Arnand (1846), 9 Q. B. 806 ; 16 L. J. (Q. B.) 50 365
— *v.* Ashwell (1810), 12 East, 22 336
— *v.* Atkinson (1701), 12 Mod. Rep. 496 253, 279
— *v.* Attwood (1833), 1 Nev. & M. (K. B.) 286 ; 4 B. & Ad. 481 . 321, 338, 351, 354
—*v.* Bankes (1764), 3 Burr. 1452 ; 1 Wm. Bl. 445, 452 354
— *v.* Bateman (1866), 4 F. & F. 1068 292
— *v.* Baughey (1823), 1 B. & C. 565 ; *sub nom.* R. *v.* Mere and Forton (Manors), 2 Dow. & Ry. (K. B.) 824 ; 1 L. J. (O. S.) (K. B.) 184. . . . 27, 100
— *v.* Bayley (1881), 8 Q. B. D. 411 ; 51 L. J. (Q. B.) 244 ; 30 W. R. 522 . 440, 442
— *v.* Beardsall (1876), 1 Q. B. D. 452 ; 45 L. J. (M. C.) 157 ; 34 L. T. 660 ; 13 Cox, C. C. 193 635
— *v.* Beavers (1756—1788), East, P. C. 383 273, 284
— *v.* Bedford Corporation (1721), 8 Mod. Rep. 35 352, 353
— *v.* Bellringer (1792), 4 Term Rep. 810 351
— *v.* Bennett (1833), 6 C. & P. 179 277
— *v.* Benney (1831), 1 B. & Ad. 684 ; 9 L. J. (O. S.) (K. B.) 104 333
— *v.* Birmingham and Gloucester Rail. Co. (1842), 3 Q. B. 223 ; 3 Ry. & Can. Cas. 148 ; 2 Gal. & Dav. 236 ; 9 C. & P. 478 ; 6 Jur. 804 . . 391, 392
— *v.* Bishop's Stoke (Lord of the Manor) (1840), 8 Dowl. 608 ; 4 Jur. 630 . 63, 91
— *v.* Bloomsbury County Court Judge (1890), 24 Q. B. D. 309 ; 62 L. T. 286 ; 38 W. R. 320 452
— *v.* Bond (1716), 1 Stra. 22 240, 255, 263, 264, 279, 285
— *v.* Bonsall (Lord of the Manor) (1824), 3 B. & C. 173 ; 4 Dow. & Ry. 825 ; 27 R. R. 319 102
— *v.* Boucher (1842), 3 Q. B. 641 ; 2 Gal. & Dav. 737 ; 6 Jur. 851 . . . 400
— *v.* Bower (Richard) (1823), 1 B. & C. 492 ; 2 Dow. & Ry. (K. B.) 761 ; 1 L. J. (O. S.) (K. B.) 110 328, 344, 352
— *v.* Bradford-on-Avon Rural District Council, *Ex parte* Thornton (1908), 99 L. T. 89 323
— *v.* Brewers' Co. (1824), 3 B. & C. 172 ; 4 Dow. & Ry. (K. B.) 492 . . 102, 105
— *v.* Briggs (1883), 47 J. P. 615 427
— *v.* Brightwell (1839), 10 Ad. & El. 171 ; 2 Per. & Dav. 413 ; 9 L. J. (Q. B.) 224 354
— *v.* Brompton County Court Judge (1886), 18 Q. B. D. 213, C. A. ; *sub nom.* Stonor *v.* Fowle (1887), 13 App. Cas. 20 . 613
— *v.* ———————————, [1893] 2 Q. B. 195 ; 57 J. P. 648 ; 62 L. J. (Q. B.) 604 ; 5 R. 462 ; 68 L. T. 829 ; 41 W. R. 648 616
— *v.* Brooks (1828), 2 Man. & Ry. (K. B.) 389 326
— *v.* Bucceleugh (Duchess) (1704), 6 Mod. Rep. 150 ; 1 Salk. 358 ; 7 Mod. Rep. 54, 98 ; Holt (K. B.), 128 ; 2 Ld. Raym. 792 20
— *v.* Bumstead (1831), 2 B. & Ad. 699 ; 9 L. J. (O. S.) (K. B.) 321 . 336, 353, 354
— *v.* Bunney (1688), 1 Salk. 190 ; Carth. 72 264, 287
— *v.* Butcher (1900), 64 J. P. 808 292
— *v.* Cadogan (Lord) (1822), 5 B. & Ald. 902 ; 1 Dow. & Ry. 559 . . . 16
— *v.* Cambridge Corporation (1679), 2 Show. 69 330
— *v.* ———————— (1767), 4 Burr. 2008 326, 351, 354
— *v.* Cambridge (Vice-Chancellor) (1765), 3 Burr. 1647 . 305, 318, 319, 320, 398
— *v.* Carlisle Corporation (1719), 1 Stra. 384 342
— *v.* ———————— (1722), Fortes. Rep. 200 331
— *v.* Carmarthen Corporation (1813), 1 M. & S. 697 348
— *v.* Carmarthenshire Justices (1847), 10 Q. B. 796 ; 2 New Sess. Cas. 679 ; 16 L. J. (M. C.) 167 ; 11 Jur. 819 227, 295
— *v.* Carter (1774), 1 Cowp. 58 327
— *v.* ——— (1876), 45 L. J. (Q. B.) 711 ; 34 L. T. 849 ; 24 W. R. 882 ; 13 Cox, C. C. 220 263, 286, 287
— *v.* Chalke (1697), 1 Ld. Raym. 2261 ; 5 Mod. Rep. 257 ; 2 Salk. 428 ; Comb. 396 324, 331
— *v.* Chesham (1861), Russell on Crimes and Misdemeanours, 6th ed., Vol. III., p. 520 292
— *v.* Chester (Dean and Chapter) (1850), 15 Q. B. 513 ; 19 L. J. (Q. B.) 485 ; 15 Jur. 10 333, 355, 356
— *v.* Chetwynd (1828), 7 B. & C. 695 ; 1 Man. & Ry. (K. B.) 534 ; 6 L. J. (O. S.) (M. C.) 49 343

PAGE
R. *v.* City of London Court Judge (1886), 18 Q. B. D. 105 ; 56 L. J. (Q. B.) 79 ; 55 L. T. 736 ; 35 W. R. 123 . . . 581
— *v.* ——————————, [1891] 2 Q. B. 71 ; 60 L. J. (Q. B.) 575 ; 64 L. T. 869 439
— *v.* Clerk (1702), 1 Salk. 377 ; 1 East, P. C. 378 ; *sub nom. Anon.*, 7 Mod. Rep. 10 239, 240, 255, 263, 264, 280, 284, 285
— *v.* Clerkenwell County Court Judge (1890), 7 T. L. R. 40 . . . 440, 510
— *v.* Coggan (1805), 6 East, 431 ; 2 Smith (K. B.), 417 28, 106
— *v.* Colchester Corporation (1788), 2 Term Rep. 259; 1 R. R. 480 . . . 355
— *v.* Colmer (1864), 9 Cox, C. C. 506 265, 292
— *v.* Coopers' Co., Newcastle (1798), 7 Term Rep. 543 315, 338, 339
— *v.* Coote (1873), L. R. 4 C. P. 599 ; 9 Moo. P. C. C. (N. S.) 463 ; 42 L. J. (P. C.) 45 ; 29 L. T. 111 ; 21 W. R. 553 ; 12 Cox, C. C. 557 292
— *v.* Copthall (Lord of the Manor) (1853), 1 W. R. 306 104
— *v.* Corbett (1853), 1 E. & B. 836 ; 22 L. J. (Q. B.) 335 ; 17 Jur. 1024 ; 1 W. R. 306 104
— *v.* Coulson (1891), 55 J. P. 262 269
— *v.* Coventry Corporation (1698), 1 Ld. Raym. 391 328
— *v.* Cowper (1890), 24 Q. B. D. 533 ; 59 L. J. (Q. B.) 265; 62 L. T. 583 ; 38 W. R. 409, C. A. 468, 584
— *v.* Cross (or Crosse) (1664), 1 Sid. 204 ; 1 Lev. 136 ; T. Raym. 97 ; 1 Keb. 723, 744 259, 275
— *v.* Culliford (1703), 1 Salk. 382 292
— *v.* Cumberland Justices (1848), 17 L. J. (Q. B.) 102 ; 5 Ry. & Can. Cas. 332 ; 5 Dan. & Ll. 431 ; 12 Jur. 1025 382
— *v.* Cutbush (1768), 4 Burr. 2204 336, 351
— *v.* Dacres (Lord) (1553), Jenk., case 35 ; 1 Dyer, 81 a 309, 314
— *v.* Dalzell (1888), 4 T. L. R. 725 284
— *v.* Dare (1861), 2 F. & F. 355 48
— *v.* Darlington School (Governors) (1844), 6 Q. B. 682 ; 14 L. J. (Q. B.) 67 328, 330, 336, 342
— *v.* Davies (1861), 8 Cox, C. C. 486 427
— *v.* Dawes (1769), 4 Burr. 2277 332
— *v.* Day (1829), 9 B. & C. 702 ; 4 Macl. & Rob. 541 ; 7 L. J. (O. S.) (K. B.) 308 332
— *v.* Dendy (1852), 22 L. J. (Q. B.) 39 102
— *v.* Derby Corporation (1735), Cas. *temp.* Hard. 153 325
— *v.* Devonshire (1823), 1 B. & C. 609 ; 3 Dow. & Ry. 83 344, 351
— *v.* Dewsbury County Court Judge (1889), 89 L. T. Jo. 44 615
— *v.* Dickin (1791), 4 Term Rep. 282 325, 326
— *v.* Dolby (1822), cited in Umfreville on the Office and Duty of Coroners, 144 . 249
— *v.* ——— (1823), 2 B. & C. 104 ; 3 Dow. & Ry. 311 ; 1 L. J. (O. S.) (K. B.) 241 . 248
— *v.* Doncaster Corporation (1729), 1 Barn. (K. B.) 264 330, 332
— *v.* ——————————— (1828), 7 B. & C. 630 327
— *v.* Downes (1826), 5 B. & C. 182 ; 7 Dow. & Ry. 775 327
— *v.* D'Oyly (1840), 12 Ad. & El. 139 ; 4 Per. & Dav. 52 ; 4 Jur. 1056 . . 349
— *v.* Dublin Corporation (1826), Batt. 628 323, 354
— *v.* Duffin (1733), 2 Barn. (K. B.) 370 344
— *v.* Dullingham (Lady of the Manor (1838), 8 Ad. & El. 858 ; 1 Per. & Dav. 172 ; 1 Will. Woll. & H. 865 ; 8 L. J. (Q. B.) 37 33, 100, 102
— *v.* Dulwich College (1851), 17 Q. B. 600 ; 21 L. J. (Q. B.) 36 ; 16 Jur. 654 . 314, 336, 352
— *v.* Eastern Counties Rail. Co. (1839), 10 Ad. & El. 531 ; 2 Per. & Dav. 648 ; 1 Ry. & Can. Cas. 509 ; 8 L. J. (Q. B.) 340 360
— *v.* Ely (Bishop) (1788) 2 Term Rep. 290 355, 356
— *v.* Eriswell (Inhabitants) (1790), 3 Term Rep. 707 258, 291
— *v.* Eton College (Lords of the Manor of Everdon) (1846), 8 Q. B. 526 . . 99
— *v.* Everett (1852), 1 E. & B. 273 ; *sub nom.* Adey *v.* Trinity House (Deputy Master) (1853), 22 L. J. (Q. B.) 3 431
— *v.* Evett (1827), 6 B. & C. 247 ; 9 Dow. & Ry. 237 ; 5 L. J. (O. S.) (M. C.) 36 . 275, 276, 277, 280, 281, 283, 284
— *v.* Eye Corporation (1821), 4 B. & Ald. 271 ; 2 Dow. & Ry. 172 ; 1 B. & C. 85 323
— *v.* Faversham Fishermen (1799), 8 Term Rep. 352 338
— *v.* Fearnley (1786), 1 Term Rep. 316 274
— *v.* Ferrand (1819), 3 B. & Ald. 260 ; 1 Chit. 745 262, 263, 264
— *v.* Fleet (1818), 1 B. & Ald. 379 268
— *v.* Fletcher (1852), 2 E. & B. 279 ; 21 L. J. (Q. B.) 310 ; 7 Jur. 179 . . 615

PAGE
R. *v.* Fowey Corporation (1824), 2 B. & C. 584 ; 5 Dow. & Ry. 614 . . . 351
— *v.* Foxcroft (1760), 2 Burr. 1017 ; 1 Wm. Bl. 229 352, 353, 355
— *v.* Garland (1870), L. R. 5 Q. B. 269 ; 39 L. J. (Q. B.) 86 ; 22 L. T. 160 ; 18 W. R. 429 103
— *v.* Ginever (1796), 6 Term Rep. 732 336, 350
— *v.* Gloucestershire Justices (1857), 7 E. & B. 805 ; 27 L. J. (M. C.) 15 . 227, 295
— *v.* Glover (1665), 1 Keb. 907 ; 1 Sid. 259 280, 281
— *v.* ——— (1864), 9 Cox, C. C. 500 ; Le. & Ca. 466 ; 33 L. J. (M. C.) 169 ; 10 Jur. (N. S.) 710 ; 10 L. T. 582 ; 12 W. R. 885 421
— *v.* Graham (1905), 193 L. T. 371 ; 69 J. P. 324 ; 21 T. L. R. 576 . . 241, 288
— *v.* Grampound Corporation (1795), 6 Term Rep. 301 326
— *v.* Grant (1830), 8 L. J. (O. S.) (K. B.) 352 326
— *v.* Gravesend Corporation (1824), 4 Dow. & Ry. (K. B.), 117 ; 2 B. & C. 602 ; 2 L. J. (O. S.) (K. B.) 94 329
— *v.* Great Grimsby Corporation (1832), 1 L. J. (M. C.) 23 325, 331
— *v.* Great North of England Rail. Co. (1846), 9 Q. B. 315 ; 2 Cox, C. C. 70 ; 16 L. J (M. C.) 16 ; 10 Jur. 755 ; 2 Cox, C. C. 70 391
— *v.* Great Western Rail. Co. (1842), 3 Q. B. 333 ; 3 Ry. & Can. Cas. 161 ; 2 Gal. & Dav. 773 ; 11 L. J. (M. C.) 86 ; 6 Jur. 823 220
— *v.* Great Western Rail. Co. (Directors) (1888), 20 Q. B. D. 410 ; 52 J. P. 772 ; 57 L. J. (M. C.) 31 ; 58 L. T. 765 ; 36 W. R. 506 ; 16 Cox, C. C. 410 ...277, 283, 284
— *v.* Great Western Rail. Co. (1893), 62 L. J. (Q. B.) 572 ; 9 R. 127 ; 69 L. T. 572, C. A. 360
— *v.* Greenwich County Court Judge (1888), 37 W. R. 132, C. A. . . 548, 613
— *v.* Greet (1828), 8 B. & C. 363 ; 2 Man. & Ry. 391 ; 7 L. J. (O. S.) (K. B.) 92 . 344
— *v.* Grey (1724), 8 Mod. Rep. 358 397
— *v.* Grimes (1770), 5 Burr. 2681 342
— *v.* Grimshaw (1847), 10 Q. B. 747 ; 16 L. J. (Q. B.) 385 ; 11 Jur. 965 . 225, 226, 326, 348
— *v.* Grosvenor (Sir R.) (1733), 7 Mod. Rep. 198 318
— *v.* Grout (1830), 1 B. & Ad. 104 318
— *v.* Guilford Corporation (1666), T. Raym. 152 397
— *v.* Haddenham (Inhabitants) (1812), 15 East, 463 82
— *v.* Hale (1838), 9 Ad. & El. 339 ; 1 Per. & Dav. 293 ; 8 L. J. (Q. B.) 83 . 53, 54
— *v.* Halifax County Court Judge, [1891] 2 Q. B. 263 ; 60 L. J. (Q. B.) 550 ; 65 L. T. 104 ; 39 W. R. 545, C. A. 431
— *v.* Ham (Lady of the Manor) (1839), 8 L. J. (Q. B.) 265 106
— *v.* Hankins (1849), 2 Car. & Kir. 824 617
— *v.* Harris (1831), 1 B. & Ad. 936 ; 9 L. J. (O. S.) (K. B.) 165 . . 330, 332, 342
— *v.* Harrison (1664), 1 Sid. 225 280
— *v.* ——— (1692), 12 How. State Tr. 834 ; Buller (N. P.), 238 . . . 291
— *v.* ——— (1800), 1 East, P. C. 382 254
— *v.* Harwood (1853), 22 L. J. (Q. B.) 127 ; 1 Bell, C. C. 144 ; 17 Jur. 87 ; 1 W. R. 195 521, 548, 615
— *v.* Hastings Corporation (1822), 1 Dow. & Ry. (K. B.) 148 ; 5 B. & Ald. 692, n. 318
— *v.* Haughley (Inhabitants) (1833), 1 Nev. & M. (K. B.) 525 . . . 306, 307
— *v.* Havering-atte-Bower (Steward of the Manor) (1822), 5 B. & Ald. 691 ; 2 Dow. & Ry. 176, n. 11
— *v.* Haythorne (1826), 5 B. & C. 410 ; 8 Dow. & Ry. 228 319, 321
— *v.* Heaven (1788), 2 Term Rep. 772 330
— *v.* Hedger (1840), 12 Ad. & El. 139 : 4 Per. & Dav. 61 354
— *v.* Hendon (Lord of the Manor) (1788), 2 Term Rep. 484 . . . 29, 90, 105
— *v.* Herford (1860), 3 E. & E. 115 ; 29 L. J. (Q. B.) 249 ; 6 Jur. (N. S.) 750 ; 2 L. T. 459 ; 8 W. R. 579 296
— *v.* Hothersal (1685), 3 Mod. Rep. 80 284, 285
— *v.* Hexham (Lord of the Manor) (1836), 5 Ad. & El. 559 ; 1 Nev. & P. (K. B.) 53 ; 2 H. & W. 397 ; 6 L. J. (K. B.) 33 105, 106
— *v.* Hill (1825), 4 B. & C. 426 342, 343
— *v.* Hinde (1841), 5 Q. B. 944 ; 13 L. J. (M. C.) 150 ; 8 Jur. 927 . . 256, 264
— *v.* Holroyd (1883), 32 W. R. 370 441
— *v.* Hornchurch (Inhabitants) (1818), 2 B. & Ald. 189 85
— *v.* Hoyte (1795), 6 Term Rep. 430 341, 346
— *v.* Hubball (or Hubbald) (1826), 9 Dow. & Ry. (K. B.) 143 ; 6 B. & C. 139 ; 5 L. J. (O. S.) (M. C.) 24 329
— *v.* Huggins (1828), 3 C. & P. 414 284
— *v.* Hughes (1727), 1 Barn. (K. B.) 41 324
— *v.* ——— (1825), 4 B. & C. 368 355

PAGE
R. *v.* Hughes (1826), 5 B. & C. 886 ; 8 Dow. & Ry. 708 ; 5 L. J. (o. s.). (M.C.) 20 . 332, 350
— *v.* ——— (1828), 7 B. & C. 708 ; 1 Man. & Ry. (K. B.) 625 ; 6 L. J. (o. s.) (K. B.) 190 316, 399
— *v.* Ilchester Corporation (1824), 2 B. & C. 764 ; 4 Dow. & Ry. (K. B.) 324 ; 2 L. J. (o. s.) (K. B.) 147 321
— *v.* Ingham (1864), 5 B. & S. 257 ; 33 L. J. (Q. B.) 183 ; 10 Jur. (N. S.) 968 ; 10 L. T. 456 ; 12 W. R. 793 ; 9 Cox, C. C. 508 . . 262, 265, 276, 282, 284, 285, 288
— *v.* Ingleton (Lords of the Manor) (1840), 8 Dowl. 693 ; 4 Jur. 700 . . . 71
— *v.* Ipswich Corporation (1706), 2 Ld. Raym. 1232 344, 351
— *v.* Johnson (1873), L. R. 2 C. C. R. 15 ; 42 L. J. (M. C.) 41 ; 27 L. T. 801 ; 12 Cox, C. C. 264 237
— *v.* Joliffe (1823), 2 B. & C. 54 ; 3 Dow. & Ry. (K. B.) 240 ; 1 L. J. (o. s.) (K. B.) 232 10
— *v.* Jordan (1736), Lee *temp.* Hard. 255 327
— *v.* ——— (1887), 36 W. R. 797 616
— *v.* Kendall (1841), 1 Q. B. 366 ; 10 L. J. (Q. B.) 137 311, 345, 346
— *v.* Kent County Court (Registrar). *See* Young *v.* Brompton, Chatham etc. Waterworks Co.
— *v.* Kent Justices (1809), 11 East, 229 227, 240
— *v.* Kerr (Commissioner) (1894), 70 L. T. 595 604
— *v.* Kettle (Sir Rupert) (1886), 17 Q. B. D. 761; 55 L. J. (Q. B.) 470 ; 54 L. T. 875 ; 34 W. R. 776 606
— *v.* Keyn (1876), 2 Ex. D. 63 ; 46 L. J. (M. C.) 17 ; 13 Cox, C. C. 403 . 221, 233
— *v.* Killinghall (1756), 1 Burr. 17 258
— *v.* Lambeth County Court Judge (1887), 36 W. R. 475 616
— *v.* Land Commissioners of England (1889), 23 Q. B. D. 59 ; 53 J. P. 773 ; 58 L. J. (Q. B.) 313 ; 37 W. R. 538, C. A. 124
— *v.* Langhorn (1836), 4 Ad. & El. 538 ; 6 Nev. & M. 203 342
— *v.* Larwood (1694), 1 Ld. Raym. 29 319
— *v.* Lechmere (1851), 16 Q. B. 284 ; 20 L. J. (Q. B.) 169 ; 15 Jur. 558 . . 215
— *v.* Ledgard (1838), 3 Nev. & P. 513 ; 1 Will. Woll. & H. 487 ; 8 Ad. & El. 5 ; 7 L. J. (Q. B.) 237 355
— *v.* Lefroy (1873), L. R. 8 Q. B. 134 ; 42 L. J. (Q. B.) 121 ; 28 L. T. 132 ; 21 W. R. 332 259, 616
— *v.* Leyland (1814), 3 M. & S. 184 327, 328
— *v.* Lincoln County Court Judge (1888), 20 Q. B. D. 167 ; 57 L. J. (Q. B.) 136 ; 58 L. T. 54 ; 36 W. R. 174 612
— *v.* Liverpool Corporation (1759), 2 Burr. 723 325, 331, 342
— *v.* ——— (1887), 18 Q. B. D. 510 ; 56 L. J. (Q. B.) 413 ; 56 L. T. 314 ; 35 W. R. 475 617
— *v.* Lloyd, [1906] 1 K. B. 552 ; 75 L. J. (K. B.) 406 ; 94 L. T. 498 ; 22 T. L. R. 390 ; 54 W. R. 461, C. A. 416
— *v.* London Corporation (1691), 1 Show. 274 ; 4 Mod. Rep. 52 ; Carth. 217 ; Skin. 293, 310 ; Holt (K. B.), 168, 310 ; 12 Mod. Rep. 17 313, 359, 398
— *v.* ——— (1785), 4 Doug. 360 331
— *v.* ——— (1787), 2 Term Rep. 177 330
— *v.* ——— (1829), 4 Man. & Ry. (K. B.) 36 ; 9 B. & C. 1 . 331, 348, 355
— *v.* Lucas (1808), 10 East, 235 16
— *v.* Lundie (1861), 31 L. J. (M. C.) 157 ; 8 Jur. (N. S.) 640 ; 5 L. T. 830 ; 10 W. R. 267 338
— *v.* Lyme Regis Corporation (1779). 1 Doug. (K. B.) 149 331
— *v.* McIntosh (1858), 7 W. R. 52 285
— *v.* Mallett and Chilcote (1846), 1 Cox, C. C. 336 270, 286
— *v.* Manchester Corporation (1857), 7 E. & B. 453 ; 26 L. J. (M. C.) 65 ; 3 Jur. (N. S.) 839 ; 5 W. R. 373 392
— *v.* Manchester Overseers (1854), 3 E & B. 336 ; 2 C. L. R. 974 ; 23 L. J. (M. C.) 48 ; 18 Jur. 267 414
— *v.* Marsh (1700), 3 Salk. 172 254, 273
— *v.* Marshal (1787), 2 Term Rep. 2 323
— *v.* Marshall (1855), 4 E. & B. 475 ; 3 C. L. R. 676 ; 24 L. J. (Q. B.) 242 ; 1 Jur. (N. S.) 676 ; 3 W. R. 170 415
— *v.* Marylebone County Court Judge (1883), 50 L. T. 97 . . . 440, 441, 442
— *v.* ——— (1890), 34 Sol. Jo. 459 579, 617
— *v.* Massory (1738), Andr. 295 398

PAGE
R. *v.* May (1770), 5 Burr. 2681 343
— *v.* Meer and Forton (1823), 2 Dow. & Ry. (K. B.) 824; 1 L. J. (O. S.) (K. B.) 184 100
— *v.* Merchants Tailors' (Taylors') Co. (1831), 2 B. & Ad. 115; 9 L. J. (O. S.) (K. B.) 146 324
— *v.* Middlesex (Registrar of Deeds) (1888), 21 Q. B. D. 555, C. A. 114
— *v.* Mildmay (Lady Jane St. John) (1833), 5 B. & Ad. 254; 2 Nev. & M. 778 . 92
— *v.* Miller (1795), 6 Term Rep. 268 318, 321
— *v.* Monday (1777), 2 Cowp. 530 345, 354
— *v.* Mooney (1863), 9 Cox, C. C. 411 292
— *v.* Mulligan (Judge) (1909), 25 T. L. R. 341 501
— *v.* Nance (1740), 7 Mod. Rep. 337 352
— *v.* Newport (Salop) County Court Judge (1887), 20 Q. B. D. 242; 36 W. R. 476 612
— *v.* Newton (1618), J. Bridg. 113 370
— *v.* Norfolk Justices (1792), Nolan, 141 277, 284
— *v.* Norris (1730), 1 Barn. (K. B.) 385 345
— *v.* Norwich Corporation (1830), 1 B. & Ad. 310 354
— *v.* Ogden (1829) 10 B. & C. 230 314
— *v.* Osbourne (1803), 4 East, 327 318, 319
— *v.* Oundle (Lord of the Manor) (1834), 1 Ad. & El. 283; 3 Nev. & M. (K. B.) 484; 3 L. J. (K. B.) 117 81, 91, 103, 104
— *v.* Owen (1840), 9 C. & P. 238 292
— *v.* —— (1850), 15 Q. B. 476; 19 L. J. (Q. B.) 490; 14 Jur. 953 . . . 415
— *v.* —— (1893), 42 W. R. 254 427
— *v.* Oxford Circuit (Clerk of Assize), [1897] 1 Q. B. 370; 61 J. P. 197; 66 L. J. (Q. B.) 271; 76 L. T. 260; 45 W. R. 543; 18 Cox, C. C. 518 . 276, 279, 284, 286
— *v.* Oxfordshire County Court Judge, [1894] 2 Q. B. 440; 58 J. P. 752; 63 L. J. (Q. B.) 689; 70 L. T. 874; 42 W. R. 603; 10 R. 381 . . . 526
— *v.* Oxfordshire Justices (1818), 2 B. & Ad. 203 227
— *v.* Parham (1849), 13 Q. B. 858; 18 L. J. (Q. B.) 281; 13 Jur. 981 . . 414
— *v.* Parker (1675), 2 Lev. 140; 3 Keb. 489 264, 265, 280, 283, 284
— *v.* Parkyn (1831), 1 B. & Ad. 690; 9 L. J. (O. S.) (K. B.) 104 333
— *v.* Parry (1837) 6 Ad. & El. 810; 2 Nev. & P. 414 333
— *v.* Pasmore (1789), 3 Term Rep. 199 316, 318, 319, 399, 400
— *v.* Pateman (1788), 2 Term Rep. 777 332
— *v.* Paterson, [1895] 1 Q. B. 31; 59 J. P. 68; 64 L. J. (Q. B.) 20; 71 L. T. 671; 43 W. R. 183; 14 R. 90; 11 T. L. R. 11 690
— *v.* Patrick and Pepper (1783), 1 Leach, 253; 2 East, P. C. 1059 307
— *v.* Patteson (1832), 4 B. & Ad. 9; 1 Nev. & M. (K. B.) 612; 2 L. J. (K. B.) 33. 332
— *v.* Payn (1864), 34 L. J. (Q. B.) 59; 10 Jur. (N. S.) 1150; 11 L. T. 488; 13 W. R. 206; 10 Cox, C. C. 64 270, 284
— *v.* Pease (1832), 4 B. & Ad. 30; 1 Nev. & M. 690; 2 L. J. (M. C.) 26 . . 389
— *v.* Peckham (1778), 2 Wm. Bl. 1218 249
— *v.* Perkin (1845), 7 Q. B. 165; 14 L. J. (M. C.) 87; 9 Jur. 686 . . 237, 275, 277
— *v.* Perkins (1824), 4 Dow. & Ry. (K. B.) 427 329
— *v.* Philbrick, *Ex parte* Edwards, [1905] 2 K. B. 108; 69 J. P. 221; 74 L. J. (K. B.) 464; 92 L. T. 527; 3 L. G. R. 679; 53 W. R. 527 . . 428, 615
— *v.* Phillips (1720), 1 Stra. 394 320, 329
— *v.* Player (1819), 2 B. & Ald. 707 354
— *v.* Plummer (1844), 1 Car. & Kir. 600; 8 Jur. 921 267
— *v.* Pocock (1851), 17 Q. B. 34; 5 Cox, C. C. 172 284
— *v.* Pole (1733), 7 Mod. Rep. 194 354
— *v.* Pomfret Liberty Coroner, (1844), 8 Jur. 910. 274
— *v.* Ponsonby (1755), 1 Ves. Sen. 6; affirmed (1758), 2 Bro. Parl. Cas. 311 . 331, 332, 398
— *v.* Pontypool County Court Judge (1894), 63 L. J. (Q. B.) 702; 10 R. 356; 71 L. T. 17 615
— *v.* Portsmouth Corporation (1824), 3 B. & C. 152; 4 Dow. & Ry. 767 . . 327
— *v.* Powell (1841), 1 Q. B. 352; 4 Per. & Dav. 719 4, 106
— *v.* —— (1854), 3 E. & B. 377; 23 L. J. (Q. B.) 199; 18 Jur. 771 . . 340, 352
— *v.* Price (1884), 12 Q. B. D. 247; 53 L. J. (M. C.) 51; 33 W. R. 45, n.; 15 Cox, C. C. 389 239, 240, 264
— *v.* Pulsford (1828), 8 B. & C. 350; 2 Man. & Ry. (K. B.) 384; 6 L. J. (O. S.) (K. B.) 336 342
— *v.* Quinch (1831), 4 C. & P. 571 268
— *v.* Reed (Sir Charles) (1880), 5 Q. B. D. 483; 44 J. P. 633; 49 L. J. (Q. B.) 600; 42 L. T. 835; 28 W. R. 787, C. A. 363

PAGE
R. *v.* Richards (1851), 20 L. J. (Q. B.) 351 ; 2 L. M. & P. 263 ; 15 Jur. 358 . 615
— *v.* Richardson (1758), 1 Burr. 517 ; 2 Ld. Ken. 85 325, 330, 331
— *v.* Rigg (1866), 4 F. & F. 1085 291
— *v.* Rigge (1819), 2 B. & Ald. 550 63
— *v.* Rippon Corporation (1700), 1 Com. 86 397
— *v.* Roberts (1835), 5 Nev. & M. (K. B.) 130 ; 3 Ad. & El. 771 ; 1 H. & W. 444 ; 4 L. J. (M. C.) 118 328
— *v.* ——— (1878), 38 L. T. 690 418
— *v.* Robinson (1887), 19 Q. B. D. 322 ; 52 J. P. 22 ; 57 L. T. 275 ; 35 W. R. 843 ; 16 Cox, C. C. 287. 227, 241, 283
— *v.* Rogers (1702), 2 Ld. Raym. 777 376
— *v.* ——— (1887), 57 L. J. (Q. B.) 143 425
— *v.* Routledge (1780), 2 Doug. (K. B.) 531 319
— *v.* Rye Corporation (1828), 7 L. J. (O. S.) (K. B.) 107 323
— *v.* Saddlers' Company (1860), 3 E. & E. 42 327, 337
— *v.* ——— ——— (1863), 10 H. L. Cas. 404 330, 338, 353
— *v.* St. Katherine's Dock Co. (1832), 1 Nev. & M. (K. B.) 121 ; 4 B. & Ad. 360...307, 392, 393
— *v.* Saloway (1686), 3 Mod. Rep. 100 280, 284
— *v.* Salway (1829), 9 B. & C. 424 ; 7 L. J. (O. S.) (K. B.) 321 ; 4 Man. & Ry. (K. B.) 311 318, 319, 341, 353
— *v.* Sandys (1841), 2 Mood. C. C. 227 ; Car. & M. 345 292
— *v.* Sargent (1793), 5 Term Rep. 466 327
— *v.* Saunders (1718), 1 Stra. 167 264, 287
— *v.* Selfe, [1908] 2 K. B. 121 ; 77 L. J. (K. B.) 697 ; 98 L. T. 930 ; 24 T. L. R. 560 556
— *v.* Sheffield County Court Judge (1889), 5 T. L. R. 303 608
— *v.* Shelley (1789), 3 Term Rep. 141 16
— *v.* Shrewsbury Corporation (1735), Lee *temp.* Hard. 147 347
— *v.* Shropshire County Court Judge (1887), 20 Q. B. D. 242 ; 57 L. J. (Q. B.) 143 ; 58 L. T. 86 ; 36 W. R. 476 ; *sub nom.* R. *v.* Rogers (1887), 57 L. J. (Q. B.) 143 425, 568
— *v.* Skeats and Biles (1846), 7 L. T. (O. S.) 433 274, 277
— *v.* Slythe (1827), 6 B. & C. 240 ; 9 Dow. & Ry. 226 ; 5 L. J. (O. S.) (M. C.) 41 ; 30 R. R. 312. 323, 355
— *v.* Smart (1768), 4 Burr. 2241 344
— *v.* Smith (1814), 2 M. & S. 406 326
— *v.* ——— (1702), 7 Mod. Rep. 78 374
— *v.* Snagge, [1909] 1 K. B. 644 ; 78 L. J. (K. B.) 562 ; 25 T. L. R. 313, C. A. 530
— *v.* Soleguard (1738), Andr. 231 ; 2 Stra. 1097 233, 234
— *v.* Southampton County Court Judge (1891), 65 L. T. 320 615
— *v.* Southampton County Court (Registrar) (1892), 61 L. J. (Q. B.) 706 . 447, 615
— *v.* Southend County Court Judge (1884), 13 Q. B. D. 142. 428
— *v.* Southwold Corporation, *Ex parte* Wrightson (1907), 71 J. P. 351 ; 5 L. G. R. 888 ; 97 L. T. 431 323
— *v.* Southwood (1827), 5 Man. & Ry. (K. B.) 414 104
— *v.* Spearing. *See* R. *v.* Stacey.
— *v.* Spencer (1766), 3 Burr. 1827 335, 351
— *v.* Stacey (1785), 1 Term Rep. 1 326
— *v.* Staffordshire Coroner (1864), 10 L. T. (N. S.) 650 265, 280
— *v.* Staffordshire County Court Judge (1888), 57 L. J. (Q. B.) 483 ; 37 W. R. 796, C. A. 616
— *v.* Stamford Corporation (1844), 6 Q. B. 433 ; 8 Jur. 909 . . 226, 380, 381
— *v.* Stanlake (1672), 1 Mod. Rep. 82 ; 1 Vent. 181 ; 2 Keb. 859 . . 253, 279
— *v.* Stapylton (1851), 21 L. J. (Q. B.) 8 ; 15 Jur. 1177 615
— *v.* Staverton (1610), 1 Yelv. 190 ; Co. Litt. 58 b (r) ; 2 Watkins, 3 . . 12
— *v.* Stephenson (1884), 13 Q. B. D. 331 ; 49 J. P. 486 ; 53 L. J. (M. C.) 176 ; 52 L. T. 267 ; 33 W. R. 44 ; 15 Cox, C. C. 679 240, 264
— *v.* Stokes (1813), 2 M. & S. 71 327
— *v.* Stratford-on-Avon Corporation (1811), 14 East, 348 319, 322
— *v.* Stukely (1701), 12 Mod. Rep. 493 ; Holt, 167 253, 254, 285
— *v.* Sutton (1711), 10 Mod. Rep. 74 331
— *v.* Swyer (1830), 10 B. & C. 486 ; 8 L. J. (O. S.) (K. B.) 221 328
— *v.* Taverner (1616), 3 Bulst. 171 ; 1 Roll. Rep. 295, 360 270
— *v.* Taylor (1840), 11 Ad. & El. 949 ; 3 Per. & Dav. 652 314, 335
— *v.* ——— and West (1840), 9 C. & P. 672 289
— *v.* Theodorick (1807), 8 East, 543 343

PAGE

R. *v.* Thomas (1838), 3 Nev. & P. (K. B.) 288 ; 8 Ad. & El. 183 ; 7 L. J. (Q. B.) 141 326
— *v.* ——— and Willett (1863), 12 W. R. 108 247, 248
— *v.* Thruscross (Inhabitants) (1834), 1 Ad. & El. 126 ; 3 Nev. & M. 284 . . 95
— *v.* Tiverton Corporation (1723), 8 Mod. Rep. 186 331, 332
— *v.* Tizzard (1829), 9 B. & C. 418 ; 4 Man. & Ry. (K. B.) 400 ; 7 L. J. (O. S.) (K. B.) 275 332
— *v.* Toole (1867), I. R. 2 C. L. 36 ; 16 W. R. 439 ; 11 Cox, C. C. 75 . . 247, 248
— *v.* Tower (1815), 4 M. & S. 162 ; 16 R. R. 428 16
— *v.* Tregony Corporation (1723), 8 Mod. Rep. 127 354
— *v.* Trelawny (1765), 3 Burr. 1615 332
— *v.* Trevenen (1819), 2 B. & Ald. 339 336
— *v.* Truro Corporation (1820), 3 B. & Ald. 590 ; 2 Chit. 257 . . . 326, 330
— *v.* Tucker (1727), 1 Barn. (K. B.) 26 341
— *v.* Tunwell (1783), 3 Doug. (K. B.) 207 327
— *v.* Turner (Judge), [1897] 1 Q. B. 445 ; 66 L. J. (Q. B.) 417 ; 76 L. T. 556 ; 45 W. R. 316 450
— *v.* Tyler and International Commercial Co., [1891] 2 Q. B. 588 ; 61 L. J. (M. C.) 38 ; 60 L. T. 662, C. A. 391
— *v.* Varlo (1775), 1 Cowp. 248 318, 341, 344
— *v.* Venn (1875), L. R. 10 Q. B. 310 ; 44 L. J. (Q. B.) 158 ; 23 W. R. 909 . 77
— *v.* Wake (1728), 1 Barn. (K. B.) 80 343
— *v.* —— (1857), 8 E. & B. 384 ; 27 L. J. (Q. B.) 11 ; 4 Jur. (N. S.) 68 ; 6 W. R. 36 419
— *v.* Wakefield (1717), 1 Stra. 69 253, 254, 285
— *v.* Wall (1830), Russell on Crimes and Misdemeanours, 6th ed., Vol. III., p. 572 291
— *v.* Wanstead (Lord of the Manor) (1853), 23 L. J. (Q. B.) 67 ; 2 E. & B. 924 ; 18 Jur. 310 103, 107
— *v.* Warlow (1813), 2 M. & S. 75 333
— *v.* Warrington (1691), Salk. 152 ; Carth. 214 ; 1 Show. 327 ; Comb. 191 ; Holt (K. B.), 166 ; 4 Mod. Rep. 65 ; 12 Mod. Rep. 22 248
— *v.* Weedon, Beck (Lords of the Manor) (1849), 13 Q. B. 808 ; 18 L. J. (Q. B.) 289 ; 13 Jur. 1121 99
— *v.* Wells Corporation (1767), 4 Burr. 1999 332
— *v.* West (1841), 1 Q. B. 826 ; 5 Jur. 485 ; 1 Gal. & Dav. 481 239
— *v.* West Looe Corporation (1824), 3 B. & C. 677 ; 2 Dow. & Ry. 178 ; 5 Dow. & Ry. (K. B.) 414 ; 1 L. J. (O. S.) (K. B.) 44 322, 323, 330, 350
— *v.* Westmoreland County Court Judge (1887) ; 58 L. T. 417 ; 36 W. R. 477 . 612, 613
— *v.* Westwood (1830), 4 B. & C. 781 ; 2 Dow & Cl. 21 ; 4 Bli. (N. S.) 213 ; 7 Bing. 1 ; 7 Dow. & Ry. 267 317, 334, 335, 352
— *v.* Weymouth Corporation (1740), 7 Mod. Rep. 373 336
— *v.* Whalley (1849), 19 L. J. (Q. B.) 14 ; 7 Dow. & L. 317 . . . 273, 277, 284
— *v.* Wheeley (1838), 8 C. & P. 250 292
— *v.* Whichford (Steward of the Manor) (1839), 8 L. J. (Q. B.) 251 ; 3 Jur. 533 ; 7 Dowl. 709 97, 106
— *v.* Whitacre (1706), Holt (K. B.), 445 356
— *v.* White (1860), 3 E. & E. 137 ; 29 L. J. (Q. B.) 257 ; 6 Jur. (N. S.) 868 ; 2 L. T. 463 ; 8 W. R. 580 287
— *v.* ——— (1733), Lee *temp.* Hard. 8 327
— *v.* ——— (1836), 5 Ad. & El. 613 ; 1 Nev. & P. 84 ; 2 H. & W. 403 ; 6 L. J. (K. B.) 23 333
— *v.* Whitehorne (Judge), [1904] 1 K. B. 827 ; 73 L. J. (K. B.) 344 ; 90 L. T. 514 ; 20 T. L. R. 311 ; 52 W. R. 524 444
— *v.* Whitmarsh (1850), 14 Q. B. 803 ; 19 L. J. (Q. B.) 185 ; 14 Jur. 348 . . 307
— *v.* Wilberton (Lady of the Manor) (1857), 29 L. T. (O. S.) 126 . 37, 103, 109
— *v.* Wilby (Inhabitants) (1814), 2 M. & S. 504 ; 15 R. R. 328 80
— *v.* Willetts (1906), 70 J. P. 127 156, 166
— *v.* Williams (1775), 6 B. & C. 250, n. 281
— *v.* ——— (1813), 2 M. & S. 135 327, 355
— *v.* Wilshaw (1841), Car. & M. 145 292
— *v.* Wilson (1829), 10 B. & C. 80 ; 5 Mood. & R. 140 102
— *v.* ——— (1862), 32 L. J. (Q. B.) 9 ; 8 B. & S. 201 ; 9 Jur. (N. S.) 439 ; 7 L. T. 357 ; 11 W. R. 70 104
— *v.* Wimbledon Local Board (1882), 8 Q. B. D. 459 ; 46 J. P. 292 ; 51 L. J. (Q. B.) 219 ; 46 L. T. 47 ; 30 W. R. 400, C. A. 349
— *v.* Windham (1776), 1 Cowp. 377 311

PAGE
R. *v.* Wood (1855), 5 E. & B. 49 ; 3 W. R. 419 336
— *v.* —— (1908), 73 J. P. 40 285, 287
— *v.* Wyllyams (1823), 3 Dow. & Ry. (K. B.) 75 344, 351
— *v.* York Corporation (1729), 2 Ld. Raym. 1564 324
— *v.* ———————— (1792), 5 Term Rep. 66 333
— *v.* ———————— (1837), 6 Ad. & El. 419 ; 1 Nev. & P. 539 ; 6 L. J. (M. C.) 121 374
— *v.* York (Sheriffs) (1832), 3 B. & Ad. 770 ; 1 L. J. (K. B.) 211 . . . 318, 341
— *v.* Yorkshire (Coroner) (1863), 9 L. T. (N. S.) 424 ; 9 Cox, C. C. 373 . 263, 283
Ramsey *v.* Cruddas, [1893] 1 Q. B. 228 ; 57 J. P. 406 ; 62 L. J. (Q. B.) 269 ; 4 R. 218 ; 68 L. T. 364, C. A. 11, 127
Ramshay, *Ex parte* (1852), 18 Q. B. 173 ; 21 L. J. (Q. B.) 238 ; 16 Jur. 684 . 415
Randfield *v.* Randfield (1860), 1 Dr. & Sm. 310 ; 30 L. J. (CH.) 18 ; 3 L. T. 284 ; 9 W. R. 70 77
———— *v.* ———— (1861), 3 De G. F. J. 766 ; 31 L. J. (CH.) 113 ; 8 Jur. (N. S.) 161 ; 5 L. T. 698 99
Ranshaw and Robottom's Case (1601), Duke on Charitable Uses, 135 . . . 105
Rapier *v.* London Tramways Co., [1893] 2 Ch. 588 ; 63 L. J. (CH.) 36 ; 2 R. 448 ; 69 L. T. 361, C. A. 389
Rathbone *v.* Munn (1868), 9 B. & S. 708 ; 18 L. T. 856 416
Rawes *v.* Rawes (1836), 7 Sim. 624 ; 5 L. J. (CH.) 114 15
Rawnsby *v.* Lancashire and Yorkshire Rail. Co. (1887), 35 W. R. 771 . . 606
Rayson *v.* Adcock (1863), 7 L. T. 747 ; 9 Jur. (N. S.) 800 94
Read *v.* Brown (1888), 22 Q. B. D. 128 ; 58 L. J. (Q. B.) 120 ; 60 L. T. 250 ; 37 W. R. 131, C. A. 452
—— *v.* Coker (1854), 13 C. B. 850 ; 1 C. L. R. 746 ; 22 L. J. (C. P.) 201 ; 17 Jur. 990 ; 1 W. R. 413 426
Reade *v.* Bentley (1858), 3 K. & J. 271 ; 27 L. J. (CH.) 254 ; 4 Jur. (N. S.) 82 ; 6 W. R. 240 161, 162
——— *v.* Conquest (1862), 31 L. J. (C. P.) 153 ; 11 C. B. (N. S.) 479 ; 8 Jur. (N. S.) 764 ; 5 L. T. 677 ; 10 W. R. 271 183
——— *v.* Lacy (1861), 1 John. & H. 524 ; 30 L. J. (CH.) 655 ; 7 Jur. (N. S.) 463 ; 4 L. T. 354 ; 9 W. R. 531 164, 185
Recepta, The, [1893] P. 255 ; 62 L. J. (P.) 118 ; 1 R. 644 ; 69 L. T. 252 ; 41 W. R. 561 ; 42 W. R. 73 ; 7 Asp. M. L. C. 359, C. A. 534
Red Letter New Testament (Authorised Version), *Re* (1900), 17 T. L. R. 1 156, 173
Reddaway *v.* Banham, [1896] A. C. 199 ; 65 L. J. (Q. B.) 381 ; 74 L. T. 289 ; 44 W. R. 638 165
Rees *v.* Williams (1851), 7 Exch. 51 ; 21 L. J. (EX.) 24 610
Reeve *v.* Gibson, [1891] 1 Q. B. 652 ; 60 L. J. (Q. B.) 451 ; 39 W. R. 420, C. A. 186, 208
——— *v.* Medway (Upper) Navigation Co. (1905), 21 T. L. R. 400 376
Reeves *v.* Baker (1854), 18 Beav. 372 ; 2 Eq. Rep. 476 ; 23 L. J. (CH.) 599 ; 18 Jur. 588 ; 2 W. R. 354 102
Reichardt *v.* Sapte, [1893] 2 Q. B. 308 176, 183
Reid *v.* Maxwell (1886), 2 T. L. R. 790, C. A. 153
Rendall *v.* Crystal Palace Co. (1858), 4 K. & J. 326 ; 27 L. J. (CH.) 397 ; 6 W. R. 416 365, 398
Rendell *v.* Grundy, [1895] 1 Q. B. 16 ; 64 L. J. (Q. B.) 135 ; 14 R. 19 ; 71 L. T. 564 ; 43 W. R. 50, C. A. 552
Rennell *v.* Lincoln (Bishop) (1827), 7 B. & C. 113 ; 9 Dow. & Ry. 810 ; 5 L. J. (O. S.) (K. B.) 320 374
Rennie *v.* Ratcliff (1877), 35 L. T. 833 ; 25 W. R. 319 451
Renton *v.* King (1905), 21 T. L. R. 577 486
Reuss (Princess) *v.* Bos (1871), L. R. 5 H. L. 176 ; 40 L. J. (CH.) 655 ; 24 L. T. 641 322
Reuter *v.* Electric Telegraph Co. (1856), 6 E. & B. 341 ; 26 L. J. (Q. B.) 46 ; 2 Jur. (N. S.) 1245 ; 4 W. R. 564 383
Revell *v.* Jodrell (1788), 2 Term Rep. 415 84, 85
Reynolds *v.* Woodham Walter (Lord of the Manor) (1872), L. R. 7 C. P. 639 ; 41 L. J. (C. P.) 281 ; 27 L. T. 374 25, 115, 124
Rhodes *v.* Liverpool Commercial Investment Co. (1879), 4 C. P. D. 425 . 608, 614
Rich *v.* Barker (1658), Hard. 131 113
—— *v.* Player (1683), 2 Show. 286 ; Skin. 104 248
Richards *v.* Cullerne (1881), 7 Q. B. D. 623, C. A. 433
———— *v.* Harper (1866), L. R. 1 Exch. 199 ; 4 H. & C. 55 ; 35 L. J. (EX.) 130 ; 12 Jur. (N. S.) 770 ; 14 W. R. 643 69

PAGE
Richardson *v.* Kensit (1843), 5 Man. & G. 485 ; 6 Scott (N. R.), 419 ; 12 L. J. (C. P.) 154 ; 7 Jur. 856 29, 32, 35
——— *v.* Richardson, [1895] P. 346 ; 64 L. J. (P.) 119 ; 73 L. T. 135 ; 44 W. R. 102 ; 11 R. 663 ; 11 T. L. R. 588, C. A. 584
Richmond, *Re* (1863), 11 W. R. 65 328
Riddell *v.* Jenner (1833), 10 Bing. 29 ; 3 M. & S. 673 80
——— *v.* Riddell (1835), 7 Sim. 529 ; 5 L. J. (CH.) 102 99
Rider *v.* Wood (1855), 1 K. & J. 644 ; 3 Eq. Rep. 1064 ; 24 L. J. (CH.) 737 77, 87
Right *v.* Banks (1832), 3 B. & Ad. 664 ; 1 L. J. (K. B.) 254 101
——— d. Wells (Dean) *v.* Bawden (1803), 3 East, 260 78
Ripley's Case (1682), T. Jo. 198 280
Rivet *v.* Dowe (1610), Noy, 135 ; 2 Brownl. 279 59
Robarts *v.* London Corporation (1882), 46 L. T. 623 328, 330
Roberts *v.* Bignell (1887), 3 T. L. R. 552 181, 185
——— *v.* Haines (1856), 6 E. & B. 643 ; 25 L. J. (Q. B.) 353 ; 2 Jur. (N. S.) 999 ; in Ex. Ch. 7 E. & B. 625 ; 27 L. J. (EX.) 49 ; 3 Jur. (N. S.) 886 ; 5 W. R. 631 24
——— *v.* Twining (1909), 25 T. L. R. 525 339
——— *v.* Young (1618), Hob. 286 ; 1 Brownl. 172 9
Robinson *v.* Fawcett and Firth, [1901] 2 K. B. 325 ; 70 L. J. (K. B.) 639 ; 84 L. T. 629 548, 612
——— *v.* Gell (1852), 12 C. B. 191 ; 21 L. J. (C. P.) 155 ; 16 Jur. 615 . . 418
——— *v.* Gregory, [1905] 1 K. B. 534 ; 69 J. P. 161 ; 74 L. J. (K. B.) 367 ; 92 L. T. 171 ; 3 L. G. R. 308 ; 20 Cox, C. C. 781 340
——— *v.* Groscot (1696), Comb. 372 315
——— *v.* Illustrated London News (1907), *Times*, April 26, 1907 159
——— *v.* Lawrence (1851), 7 Exch. 123 ; 2 L. M. & P. 673 ; 15 Jur. 1087 538, 609
——— *v.* Lewis (1480), Y. B. 20 Edw. 4, fol. 2 371
——— *v.* London Hospital Governors (1852), 10 Hare, 19 ; 22 L. J. (CH.) 754 370, 400
——— *v.* Workington Corporation, [1897] 1 Q. B. 619 ; 61 J. P. 164 ; 66 L. J. (Q. B.) 388 ; 75 L. T. 674 ; 45 W. R. 453, C. A. 390
Robson *v.* Dodds (1869), L. R. 8 Eq. 301 ; 38 L. J. (CH.) 547 ; 20 L. T. 968 ; 17 W. R. 782 394
Rochester (Dean and Chapter) *v.* Pierce (1808), 1 Camp. 466 356
Rock *v.* Lazarus (1872), L. R. 15 Eq. 104 ; 42 L. J. (CH.) 105 ; 27 L. T. 744 ; 21 W. R. 215 153, 165, 202
Rodgers *v.* Marshall (1809), 17 Ves. 294 90
Roe *v.* Pierce (1809), 2 Camp. 96 382
——— d. Ashton *v.* Hutton (1763), 2 Wils. (K. B.) 162 57, 103
——— Beebee *v.* Parker (1792), 5 Term Rep. 26 8, 10, 17
——— Bennett *v.* Jeffery (1813), 2 M. & S. 92 10
——— Cosh *v.* Loveless (1819), 2 B. & Ald. 453 103
——— Crow *v.* Baldwere (1793), 5 Term Rep. 104 68, 70
——— Jeffereys *v.* Hicks (1764), 2 Wils. (K. B.) 13 50
——— Johnson *v.* Ireland (1809), 11 East, 280 114
——— Newman *v.* Newman (1760), 2 Wils. (K. B.) 125 84
——— Noden *v.* Griffits (1766), 4 Burr. 1961 ; 1 Wm. Bl. 605 . . 92, 93, 98, 99
Roff *v.* Miller (1850), 19 L. J. (C. P.) 278 ; 14 Jur. 746 452
Rogers, *Ex parte* (1868), L. R. 3 C. P. 490 526
——— *v.* Birkmire (1736), Lee *temp.* Hard. 245 40
——— *v.* Jones (1825), 5 Dow. & Ry. (K. B.) 484 16
——— *v.* London, Chatham and Dover Rail. Co. (1877), 26 W. R. 192 . . 312
Rolfe *v.* Chester (1855), 20 Beav. 610 ; 25 L. J. (CH.) 244 70
——— *v.* Learmouth, (1849) 14 Q. B. 196 ; 19 L. J. (Q. B.) 10 ; 13 Jur. 986 . 450
Rooke *v.* Kensington (Lord) (1856), 2 K. & J. 753 ; 25 L. J. (CH.) 795 ; 2 Jur. (N. S.) 755 ; 4 W. R. 829 19
Rooper *v.* Harrison (1855) 2 K. & J. 86 19
Rous *v.* Artois (1587), 2 Leon. 45 ; Moore (K. B.), 236 ; 4 Co. Rep. 24 a ; Owen. 27 83
Routledge *v.* Hislop (1860), 29 L. J. (M. C.) 90 ; 5 E. & E. 549 ; 6 Jur. (N. S.) 398 ; 2 L. T. 53 ; 8 W. R. 363 534
——— *v.* Low (1868), L. R. 2 H. L. 100 ; 37 L. J. (CH.) 454 ; 18 L. T. 874 ; 16 W. R. 1081 138, 163
——— *v.* R. (1780), Doug. (K. B.) 531 319
Rowe *v.* Brenton (1828), 8 B. & C. 737 ; 3 Man. & Ry. 133 . . . 10, 66, 76, 133
Rowles *v.* Mason (1612), 2 Brownl. 199 74
Rowley *v.* Adams (1851), 14 Beav. 130 ; 20 L. J. (CH.) 436 ; 15 Jur. 1002 . . 88
Roworth *v.* Wilkes (1807), 1 Camp. 94 147, 204

PAGE
Royal Bank of India's Case, (1869), 4 Ch. App. 252 335, 364
Royal British Bank *v.* Turquand (1856), 6 E. & B. 327 ; 24 L. J. (Q. B.) 327 ; 1 Jur. (N. S.) 1086 361, 363
Royal Liver Friendly Society, *Re* (1887), 35 Ch. D. 332 ; 56 L. J. (CH.) 821 ; 56 L. T. 817 ; 36 W. R. 7 611
Royden *v.* Moulster (1626), Godb. 368 ; 2 Roll. Rep. 383 ; Cro. Car. 42 . . 68
Ruben *v.* Great Fingal Consolidated, [1906] A. C. 439 ; 75 L. J. (CH.) 843 ; 95 L. T. 214 ; 22 T. L. R. 712 ; 13 Mans. 248 310, 388
Ruddington Land, *Re* (1909), 78 L. J. (CH.) 378 401
Rumboll *v.* Rumboll (1761), 2 Eden, 15 74
Rundle *v.* Rundle (1692), 2 Vern. 264 74
Russell *v.* Briant (1849), 8 C. B. 836 ; 19 L. J. (C. P.) 33 ; 14 Jur. 201 . . 185
——— *v.* Smith (1848), 12 Q. B. 217 ; 17 L. J. (Q. B.) 225 ; 12 Jur. 723 . . 175, 179, 183
——— *v.* Wakefield Waterworks Co. (1875), L. R. 20 Eq. 474 ; 44 L. J. (CH.) 496 ; 32 L. T. 685 ; 23 W. R. 887 394
Rutter *v.* Chapman (1841), 8 M. & W. 1 ; 10 L. J. (EX.) 495 316
Ryder (H. D.), *Re* (1882), 20 Ch. 514 ; 30 W. R. 417, C. A. 113
——— *v.* Wombwell (1868) L. R. 4 Exch. 32 ; 38 L. J. (EX.) 8 ; 19 L. T. 491 ; 17 W. R. 167 538
Ryland *v.* Jackson (1902), 18 T. L. R. 574 533

S.

SADGROVE *v.* Bryden, [1907] 1 Ch. 318 ; 76 L. J. (CH.) 184 ; 96 L. T. 361 ; 23 T. L. R. 255 ; 14 Mans. 47 350
Sadler, *Re* (1816), 1 Madd. 581 369
——— *v.* South Staffordshire and Birmingham District Steam Tramways Co. (1889), 23 Q. B. D. 17 ; 53 J. P. 694 ; 58 L. J. (Q. B.) 421 ; 37 W. R. 582, C. A. 389
Sadlers' Case, The (1587), 4 Co. Rep. 54 b 212
St. John's College, Cambridge (Master) *v.* Todington (1757), 1 Burr. 158 ; 1 Ld. Ken. 441 356
St. Katherine's Hospital Case (1671), 1 Vent. 149 329
St. Leonard's, Shoreditch, Guardians *v.* Franklin (1878), 3 C. P. D. 377 ; 47 L. J. (C. P.) 727 ; 39 L. T. 122 ; 26 W. R. 882 357, 358
St. Louis Breweries, Ltd. *v.* Apthorpe (1899), 63 J. P. 135 ; 79 L. T. 551 ; 15 T. L. R. 112 ; 47 W. R. 334 311, 312
St. Pancras Vestry *v.* Batterbury (1857), 2 C. B. (N. S.) 477 ; 26 L. J. (C. P.) 243 ; 3 Jur. (N. S.) 1106 678
St. Paul *v.* Dudley and Ward (Viscount) (1808), 15 Ves. 167 111
Salford Corporation *v.* Lever (1890), 24 Q. B. D. 695 ; 54 J. P. 519 ; 59 L. J. (Q. B.) 248 ; 62 L. T. 434 396
Salisbury d. Cooke *v.* Hurd (1776), 2 Cowp. 481 79
——— (Marquis) *v.* Gladstone (1861), 9 H. L. Cas. 692 ; 34 L. J. (C. P.) 222 ; 4 L. T. 849 ; 9 W. R. 930 9, 23
Salomon *v.* Salomon & Co., [1897] A. C. 22 ; 66 L. J. (CH.) 35 ; 75 L. T. 426 ; 45 W. R. 193 ; 4 Mans. 89 302, 303
Salomons *v.* Laing (1850), 12 Beav. 339 ; 6 Ry. & Can. Cas. 289 ; 19 L. J. (CH.) 225 ; 14 Jur. 471 360
Salop County Coroner, *Re* (1849), 1 Mac. & G. 377 217
Salter *v.* Grosvenor (1723), 8 Mod. Rep. 303 376
Samson, *Re*, Robbins *v.* Alexander (1907), 123 L. T. Jo. 86, C. A. 589
Sanders *v.* St. Neot's Union (1846), 8 Q. B. 810 ; 15 L. J. (M. C.) 104 ; 10 Jur. 566 384
Sanford *v.* Stevens (1616), 3 Bulst. 281 25
Sangster *v.* Kay (1850), 5 Exch. 3886 ; 19 L. J. (EX.) 314 450
San Paulo (Brazilian) Rail. Co. *v.* Carter, [1896] A. C. 31 311
Sargent *v.* Wedlake (1851), 11 C. B. 732 ; 15 Jur. 1134 618
Sarpy *v.* Holland, [1908] 2 Ch. 198 ; 77 L. J. (CH.) 637 ; 99 L. T. 317 ; 24 T. L. R. 600, C. A. 141, 178, 187, 202
Saunders *v.* Smith (1838), 3 My. & Cr. 711 ; 7 L. J. (CH.) 227 ; 2 Jur. 491 . 164
——— *v.* Swansea Finance Co. and Home (1905), 21 T. L. R. 317, C. A. 418, 539
Saye and Sele (Lord), *Ex parte*, *Ex parte* Hereford (Bishop). *See* Hereford (Bishop), *Ex parte*, *Ex parte* Saye and Sele (Lord).
Sayer *v.* Dicey (1770), 3 Wils. 60 202, 205

PAGE
Saywood *v.* Cross (1885), 14 Q. B. D. 53 ; 54 L. J. (Q. B.) 17 ; 51 L. T. 601 ; 33 W. R. 135 586
Scadding *v.* Lorant (1851), 3 H. & C. 418 ; 15 Jur. 955 348
Scambler's Case (1598), Cro. Eliz. 636 62
Scarborough Corporation *v.* Butler (1685), 3 Lev. 237 308
Schauer *v.* Field (J. C. & J.), Ltd., [1893] 1 Ch. 35 ; 62 L. J. (CH.) 72 ; 3 R. 78 ; 68 L. T. 81 ; 41 W. R. 201 172
Schiller, Cargo ex (1877), 2 P. D. 145 ; 36 L. T. 714 ; 3 Asp. M. L. C. 439, C. A. 6, 7
Schlesinger *v.* Bedford (1890), 63 L. T. 762 183
——— *v.* Turner (1890), 63 L. J. (C. P.) 764 183
Schove *v.* Schmincké (1886), 33 Ch. D. 546 ; 55 L. J. (CH.) 892 ; 55 L. T. 212 ; 34 W. R. 700 143, 144
Sconce *v.* Blackman (1886), 2 T. L. R. 421 560
Scoones *v.* Morrell (1839), 1 Beav. 251 4
Scorey's Case (1748), 1 Leach, 43 254, 265
Scott *v.* Clifton School Board (1884), 14 Q. B. D. 500 ; 52 L. T. 501 ; 33 W. R. 368 381, 382
——— *v.* Manchester Corporation (1857), 2 H. & N. 204 ; 26 L. J. (EX.) 406 ; 3 Jur. (N.S.) 590 ; 5 W. R. 598 387
——— *v.* Royal Wax Candle Co. (1876), 1 Q. B. D. 404 ; 45 L. J. (Q. B.) 586 ; 34 L. T. 683 ; 24 W. R. 668 395
——— *v.* Shearman (1775), 2 Wm. Bl. 977 258
——— *v.* Stanford (1867), L. R. 3 Eq. 718 ; 36 L. J. (CH.) 729 ; 16 L. T. 51 ; 15 W. R. 757 147, 164
——— *v.* Stansfield (1868), L. R. 3 Exch. 221 ; 37 L. J. (EX.) 155 ; 18 L. T. 572 ; 16 W. R. 911 415
Scottish North-Eastern Rail. Co. *v.* Stewart (1859), 3 Macq. 382 ; 5 Jur. (N. S.) 697 ; 7 W. R. 458 359, 379
Scratton *v.* Brown (1825), 4 B. & C. 485 ; 6 Dow. & Ry. (K. B.) 536 5, 7
Scriveners' Co. *v.* Brooking (1842), 3 Q. B. 95 ; 2 Gal. & Dav. 419 ; 11 L. J. (Q. B.) 169 ; 6 Jur. 835 337
Seaman *v.* Woods (1857), 27 L. J. (CH.) 538 ; 24 Beav. 372 ; 4 Jur. (N. S.) 725 99, 104
Searle *v.* Cooke (1890), 43 Ch. D. 519 ; 59 L. J. (CH.) 259 ; 62 L. T. 221, C. A. . 46, 47, 49, 59, 117, 120
Searles *v.* Scarlett, [1892] 2 Q. B. 56 ; 56 J. P. 789 ; 61 L. J. (Q. B.) 573 ; 66 L. T. 837 ; 40 W. R. 696, C. A. 548
Seaton *v.* Grant (1867), 2 Ch. App. 459 ; 36 L. J. (CH.) 638 ; 16 L. T. 758 ; 15 W. R. 602 394
Seeley *v.* Fisher (1841), 11 Sim. 581 144
Sefton (Lord) *v.* Salisbury (Lord) (1859), 7 W. R. 272 52
Semayne's Case (1604), 5 Co. Rep. 91 559
Serrell *v.* Derbyshire Rail. Co. (1850), 9 C. B. 811 ; 19 L. J. (C. P.) 371 . 361, 362
Seventh East Central Building Society, *Re* (1884), 51 L. T. 109 392
Seymour *v.* Coulson (1880), 5 Q. B. D. 359 ; 49 L. J. (Q. B.) 604, C. A. . . 604
Shafto *v.* Bolckow, Vaughan & Co. (1887), 34 Ch. D. 725 ; 56 L. J. (CH.) 735 ; 56 L. T. 608 ; 35 W. R. 562 23
Sharp *v.* Dawes (1876), 2 Q. B. D. 26 ; 46 L. J. (Q. B.) 104 ; 36 L. T. 188 ; 25 W. R. 66, C. A. 344
Sharrock *v.* London and North Western Rail. Co. (1875), 1 C. P. D. 70 ; 33 L. T. 341 ; 24 W. R. 346 603, 614
Shaw *v.* Lutman (1897), 42 Sol. Jo. 34 607, 608
——— *v.* Port Philip Co., Ltd. (1884), 13 Q. B. D. 103 ; 53 L. J. (Q. B.) 369 ; 50 L. T. 685 ; 32 W. R. 771 388
——— *v.* Poynter (1834), 2 Ad. & El. 312 ; 4 N. & M. 290 ; 4 L. J. K. B. 16 . 339
——— *v.* Taylor (1616), Hut. 415 43
——— *v.* Thompson (1595), 4 Co. 30 b 78, 80
Shears *v.* Jacob (1866), L. R. 1 C. P. 513 ; Har. & Ruth. 492 ; 35 L. J. (C. P.) 241 ; 12 Jur. (N. S.) 785 ; 14 L. T. 286 ; 14 W. R. 609 363
Sheffield and South Yorkshire Building Permanent Society, *Re* (1889), 22 Q. B. D. 470 ; 53 J. P. 375 ; 58 L. J. (Q. B.) 265 ; 60 L. T. 186 302
Sheffield, Rotherham, and Chesterfield Fire and Life Insurance Co., *Re* (1847), 16 L. J. (Q. B.) 407 ; 11 Jur. 1015 307
Sheils *v.* Rait (1849), 7 C. B. 116 449
Shelford *v.* Louth and East Coast Rail. Co. (1879), 4 Ex. D. 317 ; 28 W. R. 407, C. A. 395
Shelley's Case (1581), 1 Co. Rep. 93 b. ; 1 And. 69 ; Moore (K. B.), 136 ; Jenk. 249 68

PAGE
Shepherd *v.* Conquest (1856), 17 C. B. 427 ; 25 L. J. (C. P.) 127 ; 2 Jur. (N. S.) 236 ; 4 W. R. 283 137, 159, 176
Sheppard *v.* Woodford (1839), 5 M. & W. 608 ; 9 L. J. (EX.) 90 29, 35
Sherard's Case (1763). *See* Powel *v.* Milbank.
Sherbon *v.* Lewis (1597), Gouldsb. 120 307
Shields Whitley and District Amalgamated Model Building Society *v.* Richards (1901), 84 L. T. 587 444, 447
Shiels *v.* Great Northern Rail. Co. (1861), 30 L. J. (Q. B.) 331 ; 7 Jur. (N. S.) 631 ; 4 L. T. 479 ; 9 W. R. 739 449
Shopland *v.* Ryoler (1605), Cro. Jac. 98 83
Shrewsbury (Earl) *v.* North Staffordshire Rail. Co. (1865), 35 L. J. (CH.) 156 ; L. R. 1 Eq. 593 ; 12 Jur. (N. S.) 63 ; 13 L. T. 648 ; 14 W. R. 220 . . 359
Shrewsbury and Birmingham Rail. Co. *v.* London and North Western Rail. Co. (1853), 4 De G. M. & G. 115 . . 359
——— (Directors) *v.* North Western Rail. Co. (Directors) (1857), 6 H. L. Cas. 113 ; 26 L. J. (CH.) 482 ; 3 Jur. (N. S.) 775 . 360, 379
Shrewsbury School, *Re* (1836), 1 My. & Cr. 632 305
Shuttleworth *v.* Garnet (1689), 3 Lev. 261 59
Sills *v.* Brown (1840), 9 C. & P. 601 292, 341
Simmons *v.* Malling Rural Council, [1897] 2 Q. B. 433 ; 61 J. P. 502 ; 66 L. J. (Q. B.) 585 ; 77 L. T. 341 ; 45 W. R. 603 337
Simpson *v.* Denison (1852), 10 Hare, 51 ; 16 Jur. 828 346
——— *v.* Parsons (1904), 48 Sol. Jo. 622 587
——— *v.* Westminster Palace Hotel Co. (1860), 8 H. L. Cas. 712 ; 6 Jur. (N. S.) 985 ; 2 L. T. 707 394
Sims *v.* Marryatt (1851), 17 Q. B. 281 ; 20 L. J. (Q. B.) 454 161
Sitwell *v.* Worrall (1898), 79 L. T. 86 23
Skinner *v.* Northallerton County Court Judge, [1899] A. C. 439 ; 63 J. P. 756 ; 68 L. J. (Q. B.) 896 ; 80 L. T. 814 ; 15 T. L. R. 433 ; 6 Mans. 274 . . . 610
Slark *v.* Highgate Archway Co. (1814), 5 Taunt. 792 362
Slater *v.* Alvey (1870), L. R. 2 P. & D. 154 ; 23 L. T. 324 ; 18 W. R. 1103 . . 645
Slattery *v.* Naylor (1888), 13 App. Cas. 446 ; 57 L. J. (P. C.) 73 ; 59 L. T. 41 ; 36 W. R. 897 337
Slingsby *v.* Bradford Patent Truck and Trolley Co., [1903] W. N. 122 . 144, 146
Sloman *v.* New Zealand (Governors) (1876), 1 C. P. D. 563 ; 46 L. J. (Q. B.) 185 ; 35 L. T. 454 ; 25 W. R. 86, C. A. 395
Smalt *v.* Whitmill (1737), 2 Stra. 1054 267
Smart, *Re*, Smart *v.* Smart (1881), 18 Ch. D. 165 ; 30 W. R. 43 . . . 8, 9, 86
——— *v.* West Ham Union Guardians (1855) 10 Exch. 867 ; 24 L. J. (EX.) 201 384
Smartle *v.* Penhallow (1703), 2 Ld. Raym. 994 ; 1 Salk. 188 ; 3 Salk. 181 ; 6 Mod. Rep. 63 ; Holt (K. B.), 163 39, 41
Smiles *v.* Belford (1877), 1 Ontario Appeals, 436 140
Smith *v.* Adams (1854), 18 Beav. 499 ; 5 De G. M. & G. 712 ; 24 L. J. (CH.) 258 ; 18 Jur. 968 ; 2 W. R. 698 80
——— *v.* Baker (1737), 1 Atk. 385 74
——— *v.* ——— & Sons, [1891] A. C. 325 ; 55 J. P. 660 ; 60 L. J. (Q. B.) 683 ; 65 L. T. 467 ; 7 T. L. R. 679 603, 604, 608
——— *v.* Birmingham and Staffordshire Gas Light Co. (1834), 1 Ad. & El. 526 ; 3 Nev. & M. (K. B.) 771 ; 3 L. J. (K. B.) 165 . . 382, 386, 387
——— *v.* Brownlow (Earl) (1870), L. R. 9 Eq. 241 ; 21 L. T. 739 ; 18 W. R. 271 18
——— *v.* Cartwright (1851), 6 Exch. 927 ; 20 L. J. (EX.) 401 381
——— *v.* Chatto (1874), 31 L. T. (N. S.) 775 ; 23 W. R. 290 147
——— *v.* Davies (1745), 1 Wils. 104 16
——— *v.* Gill, [1896] 2 Q. B. 166 ; 65 L. J. (Q. B.) 556 602
——— *v.* Glascock (1858), 27 L. J. (C. P.) 192 ; 4 C. B. (N. S.) 357 ; 6 W. R. 487 99
——— *v.* Hobbs (1887), 3 T. L. R. 293 29
——— *v.* Hurley, [1884] W. N. 99 439
——— *v.* Johnson (1863), 4 Giff. 632 ; 33 L. J. (CH.) 137 ; 9 Jur. (N. S.) 1223 ; 9 L. T. 437 ; 12 W. R. 122 148, 154, 166
——— *v.* London and South Western Rail. Co. (1854), 23 L. J. (CH.) 562 ; 1 Kay, 408 ; 2 Eq. Rep. 428 ; 2 W. R. 310 165
——— *v.* Packhurst (1742), 3 Atk. 141 47
——— *v.* Pritchard (1849), 8 C. B. 565 ; 19 L. J. (C. P.) 53 ; 14 Jur. 224 . 425, 427
——— *v.* Triggs (1721), 1 Stra. 487 ; 8 Mod. Rep. 23 98
Smith's Case (1696), Comb. 386 270, 278
Smith's (Sir James) Case (1691), Carth. 217 ; 4 Mod. Rep. 53 . . 301, 331, 391

PAGE
Smithson *v.* Cage (1619), Cro. Jac. 526 ; 2 Roll. Rep. 327 62
Smyth *v.* Darley (1849), 2 H. L. Cas. 789 342
Sneade *v.* Wotherton Barytes and Lead Mining Co., [1904] 1 K. B. 295 ; 73 L. J. (K. B.) 170 ; 90 L. T. 53 ; 20 T. L. R. 183 ; 52 W. R. 225, C. A. . . 439
Sneyd *v.* Sneyd (1738), 1 Atk. 442 78
Snook *v.* Mattock (1836), 5 Ad. & El. 239 81, 91
Snow *v.* Cutler (1663), 1 Keb. 567 ; Eq. Cas. Abr. 188 ; 1 Sid. 153 ; 1 Lev. 135 ; T. Raym. 162 17, 82
Soane *v.* Ireland (1808), 10 East, 259 4, 19, 20
Société Générale du Commerce et de l'Industrie en France *v.* Farina (J. M.) & Co., [1904] 1 K. B. 794 ; 73 L. J. (K. B.) 355 ; 90 L. T. 472 ; 20 T. L. R. 367 ; 52 W. R. 404, C. A. 397, 551
Society of Practical Knowledge *v.* Abbott (1840), 2 Beav. 559 ; 9 L. J. 307 ; 4 Jur. 453 302, 345, 365
S.-G. *v.* Law Reversionary Interest Society (1873), L. R. 8 Exch. 233 ; 42 L. J. (EX.) 146 ; 28 L. T. 769 ; 21 W. R. 854 378
Solomon *v.* London, Chatham and Dover Rail. Co. (1861), 10 W. R. 59 . . 610
——— *v.* Mulliner, [1901] 1 K. B. 76 ; 70 L. J. (K. B.) 165 ; 83 L. T. 493 ; 17 T. L. R. 87 ; 49 W. R. 364, C. A. 586
Somerset (Duke) *v.* France (1727), Fortes. Rep. 41, n. ; 1 Stra. 661 ; 2 Eq. Cas. Abr. 229 10, 18, 26, 27, 68
Somerville *v.* Turner's Contract, *Re*, [1903] 2 Ch. 583 ; 72 L. J. (CH.) 727 ; 89 L. T. 405 ; 52 W. R. 101 89
South Hetton Coal Co. *v.* North Eastern News Association, [1894] 1 Q. B. 133 ; 58 J. P. 196 ; 63 L. J. (Q. B.) 293 ; 69 L. T. 844 ; 42 W. R. 322, C. A. ...390, 391
South of Ireland Colliery Co. *v.* Waddle (1869), L. R. 4 C. P. 617 ; 38 L. J. (C. P.) 338 ; 17 W. R. 896 383
South Sea Co. *v.* Wymondsell (1732), 3 P. Wms. 143 356
South Wales Rail. Co. *v.* Redmond (1861), 10 C. B. (N.S.) 675 ; 4 L. T. 619 ; 9 W. R. 806 359
South Yorkshire Railway and River Dun Co. *v.* Great Northern Rail. Co. (1853), 22 L. J. (EX.) 305 ; 9 Exch. 55 359, 360
Southampton Corporation Case (1483), Jenk. 162 329
Southey *v.* Sherwood (1817), 2 Mer. 435 144
Southwark Water Co. *v.* Quick, (1878), 3 Q. B. D. 315 ; 47 L. J. (Q. B.) 258 ; 26 W. R. 341, C. A. 396
Sowerby *v.* Smith (1874), L. R. 9 C. P. 524 ; 43 L. J. (C. P.) 290 ; 31 L. T. 309 ; 23 W. R. 79 21, 26
Sparrow *v.* Fiend (1761), 1 Dick. 348 20
——— *v.* Reed (1848), 5 Dow. & L. 633 ; 2 B. C. Rep. 240 ; 17 L. J. (Q. B.) 183 548
Specots' Case (1590), 5 Co. Rep. 57 a 252
Spencer *v.* Boyes (1798), 4 Ves. 370 94
———, Whatley and Underhill *v.* Forster & Co., [1905] 1 K. B. 434 ; 74 L. J. (K. B.) 288 ; 92 L. T. 163 ; 21 T. L. R. 224 439, 508
Spiers *v.* Brown (1858), 6 W. R. 352 146, 147
Spiller *v.* Spiller (1819), 3 Swan. 556 90
Spindler *v.* Welford (1686), 2 Vern. 16 89
Spokes *v.* Banbury Local Board of Health (1865), L. R. 1 Eq. 42 ; 35 L. J. (CH.) 105 ; 13 L. T. 428 ; 14 W. R. 128 ; affirmed, 35 L. J. (CH.) 105 ; 11 Jur. (N. S.) 1010 ; 13 L. T. 453 ; 14 W. R. 169 396
Spottiswoode *v.* Clarke (1846), 2 Ph. 154 ; 1 Coop. Pr. Cas. 254 ; 10 Jur. 1043 . 165
Springfield *v.* Thame (1903), 89 L. T. 242 137, 147
Spyer *v.* Hyatt (1855), 20 Beav. 621 ; 1 Jur. (N.S.) 315 ; 3 W. R. 294 . . . 80
Stackeman *v.* Paton, [1906] 1 Ch. 774 ; 75 L. J. (CH.) 590 ; 54 W. R. 466 . 193, 194
Stafford Corporation *v.* Bolton (1797), 1 Bos. & P. 40 308
——— *v.* Till (1827), 12 Moore (C. P.), 260 ; 4 Bing. 75 ; 5 L. J. (O. S.) (C. P.) 77 376
Stagg *v.* Medway (Upper) Navigation Co., [1903] 1 Ch. 169 ; 72 L. J. (CH.) 177 ; 87 L. T. 705 ; 51 W. R. 329 ; 19 T. L. R. 143, C. A. 376
Stammers *v.* Dixon (1806), 7 East, 200 ; 3 Smith (K. B.), 261 85
Standen *v.* Christmas (1847), 10 Q. B. 135 ; 16 L. J. (Q. B.) 265 18
Stannard *v.* Harrison (1871), 24 L. T. 570 ; 19 W. R. 811 144, 201
——— *v.* Lee (1871), 6 Ch. App. 346 ; 40 L. J. (CH.) 489 ; 19 W. R. 615 . 144, 145
Stansfield *v.* Habergham (1804), 10 Ves. 282 77
Stanton *v.* Barnes (1597), Cro. Eliz. 373 77
——— *v.* Styles (1850), 5 Exch. 578 ; 1 L. M. & P. 575 ; 19 L. J. (EX.) 336 . 535
Staples *v.* Accidental Insurance Co. (1861), 10 W. R. 59 610

PAGE
Start *v.* West Mersea School Board (1899), 63 J. P. 440 ; 15 T. L. R. 442 . . 380
Stedall *v.* Houghton (1901), 18 T. L. R. 126 194
Steel, *Re*, Wappett *v.* Robinson, [1903] 1 Ch. 135 ; 72 L. J. (CH.) 42 ; 87 L. T. 548 ; 51 W. R. 252 109
—— *v.* Prickett (1819), 2 Stark. 463 4, 18
Steele *v.* Waller (or Walker) (1860), 28 Beav. 466 ; 6 Jur. (N. S.) 1004 ; 3 L. T. 74 102, 106
Steevens' Hospital (Governors) *v.* Dyers (John) (1864), 10 L. T. 882 . . . 385
Stephens, *Re*, *Ex parte* Bank of England (1818), 1 Swan. 10 393
—— —— *v.* Mysore Reefs Kangundy Mining Co., Ltd., [1902] 1 Ch. 745 ; 71 L. J. (CH.) 295 ; 86 L. T. 221 ; 50 W. R. 509 ; 18 T. L. R. 327 ; 9 Mans. 199 360
Stephenson *v.* Garnett, [1898] 1 Q. B. 677 ; 67 L. J. (Q. B.) 447 ; 78 L. T. 371 ; 46 W. R. 410, C. A. 446
———— *v.* Raine (1853), 2 E. & B. 744 ; 2 C. L. R. 234 ; 23 L. J. (Q. B.) 62 ; 18 Jur. 176 ; 2 W. R. 77 431
Stevens *v.* Benning (1854), 1 K. & J. 168 ; affirmed 6 De G. M. & G. 223 ; 1 Jur. (N. S.) 74 161, 162
——— *v.* Berwick-on-Tweed Corporation (1835), 4 Dowl. 277 323
——— *v.* Hounslow Burial Board (1889), 54 J. P. 309 ; 61 L. T. 839 ; 38 W. R. 236 379, 381
——— *v.* Midland Counties Rail. Co. (1854), 10 Exch. 352 ; 2 C. L. R. 1300 ; 23 L. J. (EX.) 328 ; 18 Jur. 932 387
——— *v.* Wildy (1850), 19 L. J. (CH.) 190 ; 2 Russ. 385 160, 167
Stevenson *v.* Hill (1762), 3 Burr. 1278 67
Steward *v.* Bridger (1705), 2 Vern. 516 46
———— *v.* Dunn (1844), 1 Dow. & L. 642 ; 12 M. & W. 655 ; 13 L. J. (EX.) 324 ; 8 Jur. 218 303, 328
Stiles *v.* Cardiff Steam Co. (1864), 33 L. J. (Q. B.) 310 ; 10 Jur. (N. S.) 1199 ; 10 L. T. 844 ; 12 W. R. 1080 387
—— *v.* Ecclestone, [1903] 1 K. B. 544 ; 72 L. J. (K. B.) 256 ; 51 W. R. 411 ; 88 L. T. 294 433
—— *v.* Galinski, [1904] 1 K. B. 615 ; 68 J. P. 183 ; 73 L. J. (K. B.) 485 ; 90 L. T. 437 ; 20 T. L. R. 219 ; 2 L. G. R. 341 ; 52 W. R. 462 337
Still *v.* Booth (1850), 1 L. M. & P. 440 ; 19 L. J. (Q. B.) 521 ; 15 Jur. 577 . . 613
Stockdale *v.* Onwhyn (1826), 5 B. & C. 173 ; 7 Dow. & Ry. (K. B.) 625 ; 2 C. & P. 163 ; 4 L. J. (O. S.) (K. B.) 122 144
Stockport District Waterworks *v.* Manchester Corporation (1862), 9 Jur. (N. S.) 266 ; 7 L. T. 545 ; 11 W. R. 156 365
Stokes *v.* Stokes (1887), 19 Q. B. D. 419 ; 56 L. J. (Q. B.) 494 ; 36 W. R. 28, C. A. 441
Stolworthy *v.* Powell (1886), 55 L. J. (Q. B.) 228 ; 54 L. T. 795 438
Stone *v.* Exton (1679), 2 Show. 82 107
—— *v.* Yeovil Corporation (1876), 2 C. P. D. 99 ; 46 L. J. (C. P.) 137 ; 36 L. T. 279 ; 25 W. R. 240, C. A. 379
Strahan *v.* Graham (1867), 16 L. T. 87 ; affirmed (1868) 17 L. T. 457, C. A. . 192, 203
Strata Mercella (Abbot) Case (1591), 9 Co. Rep. 24 a 5
Stratford Bridge Improvement Act, *Re*, *Ex parte* Annesley (1836), 2 Y. & C. (EX.) 350 381
Strousberg *v.* Sanders (1889), 38 W. R. 117, C. A. 599
Stuart *v.* Jones (1852), 1 E. & B. 22 ; 22 L. J. (Q. B.) 1 428, 431
Styart *v.* Staker (1691), 2 Vern. 250 112
Sunderland Marine Insurance Co. *v.* Kearney (1851), 16 Q. B. 925 ; 20 L. J. (Q. B.) 417 ; 15 Jur. 1006 393
Surrey County Cricket Club, *Re*, [1901] 2 K. B. 400 ; 65 J. P. 488 ; 70 L. J. (K. B.) 823 ; 85 L. T. 213 ; 17 T. L. R. 494 ; 50 W. R. 173 . . . 377, 378
Sutton *v.* Spectacle Makers' Co. (1864), 10 L. T. 411 381
——— *v.* Stone (1740), 2 Atk. 101 94
Sutton's Hospital Case (1612), 10 Co. Rep. 23 a ; Jenk., case 88 . . . 303, 304, 305, 306, 307, 309, 311, 313, 314, 316, 356, 359, 365, 375, 376, 391, 395
Swain *v.* Follows (1887), 18 Q. B. D. 585 ; 56 L. J. (Q. B.) 310 ; 56 L. T. 335 ; 35 W. R. 408 607
Swans' Case (1592), 7 Co. Rep. 15 b 6
Swansea Corporation *v.* Quirk (1879), 5 C. P. D. 106 ; 44 J. P. 378 ; 49 L. J. (C. P.) 157 ; 41 L. T. 758 ; 28 W. R. 371 396
Swansea Friendly Society, *Ex parte*, *Re* West of England and South Wales Banks. *See* West of England and South Wales Banks, *Re*, *Ex parte* Swansea Friendly Society.

PAGE
Swanston, *Ex parte*, *Re* Eastern Counties Railway. *See* Eastern Counties Railway, *Re*, *Ex parte* Swanston.
Swayne's Case (1608), 8 Co. Rep. 63 69, 98
Sweet *v.* Benning (1855), 16 C. B. 459 ; 24 L. J. (C. P.) 175 ; 1 Jur. (N. S.) 543 ; 3 W. R. 519 146, 148, 158, 168
——— *v.* Cater (1841), 11 Sim. 572 ; 5 Jur. 68 161
——— *v.* Maugham (1840), 11 Sim. 51 ; 9 L. J. (CH.) 323 ; 4 Jur. 479 . . . 166
Sweetland *v.* Turkish Cigarette Co. (1899), 47 W. R. 511 579, 604, 613
Swift *v.* Jewsbury (1874), L. R. 9 Q. B. 301 ; 43 L. J. (Q. B.) 56 ; 30 L. T. 31 ; 22 W. R. 319 358, 387
Swindon Waterworks Co. *v.* Wilts and Berks Navigation Co. (1875), L. R. 7 H. L. 697 ; 45 L. J. (CH.) 638 ; 33 L. T. 513 ; 24 W. R. 284 372
Sykes *v.* Firth (1877), 46 L. J. (CH.) 627 443
——— *v.* Sykes (1869), 38 L. J. (C. P.) 281 ; L. R. 4 C. P. 645 ; 20 L. T. 663 ; 17 W. R. 799 441
——— *v.* Wesleyan and General Assurance Society (1907), 76 L. J. (K. B.) 626 ; 96 L. T. 782 593
Symmers *v.* R. (1776), 2 Cowp. 489 324, 325, 355
Symons *v.* Rees (1876), 1 Ex. D. 416 ; 25 W. R. 116. 436
Syria-Ottoman Rail. Co., *Re* (1904), 20 T. L. R. 217 393

T.

TALBOT *v.* Judges (1887), 3 T. L. R. 398 153
——— *v.* Lewis (1834), 1 Cr. M. & R. 495 ; 5 Tyr. 1 ; 4 L. J. (EX.) 9 . . 7, 18
Talbot's Case (1610), 8 Co. Rep. 104 b ; 2 Brownl. 293 42
Tanistry Case (1608), Dav. Ir. 28 8
Tannetta, Walker & Co. *v.* Newport (Alexandra) Dock Co. (1890), 6 T. L. R. 325 396
Tassell *v.* Hallen, [1892] 1 Q. B. 321 ; 56 J. P. 520 ; 61 L. J. (Q. B.) 159 ; 66 L. T. 196 ; 40 W. R. 221 477
Tate *v.* Fullbrook, [1908] 1 K. B. 821 ; 77 L. J. (K. B.) 577 ; 98 L. T. 706 ; 24 T. L. R. 347 ; 52 Sol. Jo. 279, C. A. 137, 176, 183, 184
Taverner *v.* Cromwell (Lord) (1584), 3 Leon. 107 ; Cro. Eliz. 353 ; 4 Co. Rep. 27 a 13, 30, 49, 50, 98
Taylor *v.* Addyman (1853), 13 C. B. 309 ; 22 L. J. (C. P.) 94 ; 17 Jur. 461 . . 428
——— *v.* Chichester and Midhurst Rail. Co. (1867), L. R. 2 Exch. 356 ; 16 L. T. 703 359
——— *v.* ——————————— (Directors) (1870), L. R. 4 H. L. 628 ; 39 L. J. (EX.) 217 ; 23 L. T. 657 360
——— *v.* Clerke (1694), 3 Lev. 399. 249
——— *v.* Crowland Gas and Coke Co. (1855), 11 Exch. 1 ; 3 C. L. R. 865 ; 24 L. J. (EX.) 233 ; 1 Jur. (N. S.) 358 ; 3 W. R. 368 . . . 312, 450
——— *v.* Dulwich Hospital (1720), 1 P. Wms. 655 380
——— *v.* Great Northern Rail. Co. (1866), L. R. 1 C. P. 430 ; 35 L. J. (C. P.) 210 ; 12 Jur. (N. S.) 372 610
——— *v.* Neville (1878), 47 L. J. (Q. B.) 254 ; 38 L. T. 50 ; 26 W. R. 255, C. A. 159, 182
——— *v.* Nicholls (1876), 1 C. P. D. 242 ; 45 L. J. (C. P.) 455 ; 24 W. R. 673 . 451
——— *v.* Pillow (1869), L. R. 7 Eq. 418 140, 160
——— *v.* Wheeler (1706), 2 Vern. 564 ; Eq. Cas. Abr. 122 ; Salk. 449 . . 90
——— and Jame's Case (1607), Godb. 150 ; Noy, 144 6
Tear *v.* Taylor (1859), 1 F. & F. 480 47
Tewkesbury Corporation *v.* Bricknell (1809), 2 Taunt. 120 318
Thames Haven Co. *v.* Hall (1843), 5 Man. & G. 274 ; 6 Scott (N. R.), 342 ; 3 Ry. & Can. Cas. 441 ; 7 Jur. 238 382
Tharsis Sulphur and Copper Co. *v.* Société Industrielle et Commerciale de Métaux (1889), 58 L. J. (Q. B.) 435 ; 38 W. R. 79 ; 60 L. T. 924 . . . 395
Thatcher *v.* Waller (1676), T. Jo. 53 291
Thomas *v.* Churton (1862), 2 B. & S. 475 ; 31 L. J. (Q. B.) 139 ; 8 Jur. (N. S.) 795 ; 6 L. T. 320 256, 268
——— *v.* Nurse (1870), 39 L. J. (P. & M.) 80 645
——— *v.* Sylvester (1873), L. R. 8 Q. B. 368 ; 42 L. J. (Q. B.) 237 ; 29 L. T. 290 ; 21 W. R. 912 59, 120
——— *v.* Turner (1886), 33 Ch. D. 292 ; 56 L. J. (CH.) 56 ; 55 L. T. 534 ; 35 W. R. 177, C. A. 153, 154
Thombleson *v.* Black (1837), 1 Jur. 198. 158
Thompson *v.* Ingham (1850), 14 Q. B. 710 ; 19 L. J. (Q. B.) 189 ; 14 Jur. 429 . 612

PAGE
Thompson *v.* Stanhope (1774), Amb. 737 138
———— *v.* Symonds (1792), 5 Term Rep. 41 200, 202
———— *v.* Universal Salvage Co. (1848), 1 Exch. 694; 5 Dow. & L. 380; 17 L. J. (EX.) 118 362
Thompson's Settlement Trusts, *Re*, Thompson *v.* Alexander, [1905] 1 Ch. 229; 74 L. J. (CH.) 133; 91 L. T. 835; 21 T. L. R. 86 366
Thomson *v.* Flinn (1874), L. R. 17 Eq. 415; 43 L. J. (CH.) 256; 29 L. T. 829; 22 W. R. 293 446
Thorley's Cattle Food Co. *v.* Massam (1880), 14 Ch. D. 763; 42 L. T. 851; 28 W. R. 966, C. A. 390
Thorney's Case (1611), Cro. Jac. 276 274
Thornhagh *v.* Hartshorn (1727), Bunb. 237 14, 59
Thornton, *Ex parte*, R. *v.* Bradford-on-Avon Rural District Council. *See* R. *v.* Bradford-on-Avon Rural District Council, *Ex parte* Thornton.
Thurston *v.* Charles (1905), 21 T. L. R. 659 138
Thwaites' Manor, *Re* (1599), Cary, 6 26
Tiessen *v.* Henderson, [1899] 1 Ch. 861; 68 L. J. (CH.) 353; 80 L. T. 483; 47 W. R. 458; 6 Mans. 340 343
Tilbury *v.* Silva (1890), 45 Ch. D. 98; 63 L. T. 141, C. A. 4, 127
Tilson *v.* Warwick Gas Light Co. (1825), 4 B. & C. 962; 4 L. J. (O. S.) (K. B.) 53; 7 Dow. & Ry. (K. B.) 376 382
Timothy *v.* Farmer (1849), 7 C. B. 814 430
Tinniswood *v.* Pattison (1846), 3 C. B. 243 430
Tinsley *v.* Lacy (1863), 1 Hem. & M. 747; 2 New Rep. 438; 32 L. J. (CH.) 535; 11 W. R. 876 146, 166, 183
Tipping *v.* Jepson (1906), 22 T. L. R. 743, C. A. 579
Toby, *Re* (1850), 19 L. J. (Q. B.) 503 583
Toft *v.* Rayner (1847), 5 C. B. 162 613
Tomkins *v.* Jones (1889), 22 Q. B. D. 599; 58 L. J. (Q. B.) 222; 60 L. T. 939; 37 W. R. 328, C. A. 431
Tomkinson *v.* South Eastern Rail. Co. (1887), 35 Ch. D. 675; 56 L. J. (CH.) 932; 56 L. T. 812; 35 W. R. 758 394
Tomline, *Ex parte*, *Re* Walton-Cum-Trimley Manor. *See* Walton-Cum-Trimley Manor, *Re*, *Ex parte* Tomline.
Tomlinson *v.* Hampson (1894), 38 Sol. Jo. 401 494
Tone Conservators *v.* Ash (1829), 10 B. & C. 349; 8 L. J. (O. S.) (K. B.) 226 304, 306, 313, 314, 315, 320, 335, 341
Tonkin *v.* Croker (1703), 2 Ld. Raym. 860; 2 Lut. 1215; Salk. 604; Carth. 520; Holt (K. B.), 452; 12 Mod. Rep. 369 105
Tonson *v.* Walker (1752), 1 East, 359; 3 Swan. 672 146
Toole *v.* Young (1874), L. R. 9 Q. B. 523; 43 L. J. (Q. B.) 170; 30 L. T. 599; 22 W. R. 694 183
Toomey *v.* London, Brighton, and South Coast Rail. Co. (1865), 3 C. B. (N. S.) 146; 27 L. J. (C. P.) 39; 6 W. R. 44 538
Toon *v.* Stanbury-Eardley (1906), 22 T. L. R. 536 435
Toronto (City) Municipal Corporation *v.* Virgo, [1896] A. C. 88; 65 L. J. (P. C.) 4; 73 L. T. 449 339
Tory *v.* Dorchester Corporation, [1907] 1 K. B. 393; 71 J. P. 88; 76 L. J. (K. B.) 273; 96 L. T. 121; 5 L. G. R. 132 585
Tottenham Local Board *v.* Rowell (1876), 1 Ex. D. 514; 46 L. J. (EX.) 432; 35 L. T. 887; 25 W. R. 135, C. A. 678
Totterdell *v.* Fareham Blue Brick and Tile Co. (1886), L. R. 1 C. P. 674; 35 L. J. (C. P.) 278; 12 Jur. (N. S.) 901; 14 W. R. 919 361
Townley *v.* Gibson (1788), 2 Term Rep. 701 21, 24, 56
Tozeland *v.* West Ham Union, [1907] 1 K. B. 920; 71 J. P. 194; 76 L. J. (K. B.) 514; 96 L. T. 519; 23 T. L. R. 325; 5 L. G. R. 507, C. A. 389
Trade Auxiliary Co. *v.* Middlesborough and District Tradesmen's Protection Association (1889), 40 Ch. D. 425; 58 L. J. (CH.) 293; 60 L. T. 681; 37 W. R. 337, C. A. 146, 147, 148, 149, 154, 159, 160, 161, 164
Trade (Board of), *Ex parte*, *Re* Morgan. *See* Morgan, *Re*, *Ex parte* Board of Trade.
Treherne *v.* Gardner (1856), 5 E. & B. 913; 25 L. J. (Q. B.) 201; 2 Jur. (N. S.) 394; 4 W. R. 281 31, 63, 64, 100
Trash *v.* Wood (1839), 4 My. & Cr. 324; 9 L. J. (CH.) 105; 4 Jur. 669 . . . 88
Tree *v.* Bowkett (1896), 74 L. T. 77 137, 182, 183
Trevor *v.* Wilkinson (1875), 31 L. T. 731 452
Trinity College, Cambridge *v.* Browne (1686), 1 Vern. 441 42
Trinity House (Master etc.) *v.* Crispin (1757), T. Jo. 144 336

PAGE
Troitzsch *v.* Rees (1887), 3 T. L. R. 773 195
Trotter *v.* Blake (1677), 2 Mod. Rep. 229 62
Trowbridge Water Co. *v.* Wiltshire County Council (1909), 53 Sol. Jo. 448 . 359
Truro Corporation *v.* Rowe, [1901] 2 K. B. 709; 65 J. P. 806; 70 L. J. (K. B.) 1026; 85 L. T. 422; 50 W. R. 151; 17 T. L. R. 773 367
Trusler *v.* Murray (1789), 1 East, 363, n. 167
Tuck *v.* Canton (1882), 51 L. J. (Q. B.) 363 193
——— *v.* Continental Printing Co., Ltd. (1886), 3 T. L. R. 150 195
——— & Sons *v.* Priester (1887), 19 Q. B. D. 629; 52 J. P. 213; 56 L. J. (Q. B.) 533; 36 W. R. 93, C. A. 190, 191, 195, 197
Tucker *v.* R. (1742), 2 Bro. Parl. Cas. 304 353
Tuffnell *v.* Constable (1838), 7 Ad. & El. 798; 3 Nev. & P. (K. B.) 47; 1 Will. Woll. & H. 113; 7 L. J. (Q. B.) 106; 2 Jur. 79 306, 366, 377
Turley *v.* Daw (1906), 22 T. L. R. 231 426
Turnbull *v.* Inland Revenue (1904), 7 F. (Ct. of Sess.) 1 312
Turner *v.* Berry (1850), 5 Exch. 858; 1 L. M. & P. 744; 20 L. J. (EX.) 89; 14 Jur. 1099 429
——— *v.* Crush (1879), 4 App. Cas. 221; 48 L. J. (EX.) 481; 40 L. T. 661; 27 W. R. 553 609
——— *v.* Hodges (1628), Hut. 101; Het. 126 55
——— *v.* Rennoldson (1873), 42 L. J. (CH.) 510; L. R. 16 Eq. 37; 28 L. T. 330; 21 W. R. 558 444
——— *v.* Robinson (1860), 10 I. Ch. R. 510, C. A. 189, 207
——— *v.* West Bromwich Union Guardians (1860), 3 L. T. (N. S.) 662; 9 W. R. 155 114
Two Sicilies (King) *v.* Willcox (1850), 1 Sim. (N. S.) 335; 19 L. J. (CH.) 488; 14 Jur. 751 391
Tyson *v.* Smith (1838), 9 Ad. & El. 406, Ex. Ch.; (1837) 1 Nev. & P. (K. B.) 784; 6 L. J. (Q. B.) 189 9

U.

UNDERHILL *v.* Kelsey (1610), Cro. Jac. 226; 8 Co. Rep. 99 a; Godb. 268 . . 58
Urwin, *Re* (1827), cited, Sir J. Jervis on Coroners (1829), 274 291

V.

VALLANCE *v.* Nash (1858), 2 H. & N. 712; 27 L. J. (EX.) 142; 4 Jur. (N. S.) 431; 6 W. R. 227 602
Vase, *Re*, Langrich *v.* Vase, [1901] W. N. 124; 84 L. T. 761 676
Vaughan d. Atkins *v.* Atkins (1771), 5 Burr. 2765 . . . 67, 79, 80, 92, 93, 98
——— *v.* Taff Vale Rail. Co. (1860), 5 H. & N. 679; 29 L. J. (EX.) 247; 6 Jur. (N. S.) 899; 2 L. T. 394; 8 W. R. 549 389
Verlander *v.* Eddolls (1881), 51 L. J. (Q. B.) 55; 45 L. T. 543; 30 W. R. 104 . 583
Verulam (Lord) *v.* Howard (1831), 7 Bing. 327; 5 Moo. & P. 148; 9 L. J. (O. S.) (C. P.) 69 32
Vigers *v.* St. Paul's (Dean etc.) (1849), 14 Q. B. 909; 18 L. J. (Q. B.) 97; 13 Jur. 256 367
Vines *v.* Arnold (1849), 8 C. B. 632; 7 Dow. & L. 277; 19 L. J. (C. P.) 98; 14 Jur. 350 460
Vintners Co. *v.* Passey (1757), 1 Burr. 235 336
Violett (or Violent) *v.* Blake (1618), Moore (K. B.), 892; Cro. Jac. 514; 2 Roll. Rep. 49 233

W.

WADSWORTH *v.* Spain (Queen) (1851), 17 Q. B. 171; 20 L. J. (Q. B.) 488 . . 612
Wadsworth's Case (1633), Clay. 26 73
Wakefield *v.* Buccleuch (Duke) (1870), L. R. 4 H. L. 377; 39 L. J. (CH.) 441; 23 L. T. 102 24
Wakeford's Case (1588), 1 Leon. 102 104
Wakley *v.* Cooke (1849), 4 Exch. 511; 19 L. J. (EX.) 91 265
Walesby *v.* Goulston (1866), L. R. 1 C. P. 567; 35 L. J. (C. P.) 302; 12 Jur. (N. S.) 873; 14 L. T. 662; 14 W. R. 899 429

PAGE
Walker *v.* Abingdon (Lord) (1841), 10 L. J. (CH.) 289 ; 5 Jur. 714 . . . 74
——— *v.* Christ's College (Warden and Fellows) (1827), 1 Bli. (N. S.) 9 . . 394
——— *v.* Denne (1793), 2 Ves. 170 56
Wall *v.* London and Northern Assets Corporation, [1898] 2 Ch. 469 ; 79 L. T. 249 ; 14 T. L. R. 547, C. A. 347, 348
—— *v.* Taylor (1883), 11 Q. B. D. 102 ; 52 L. J. (Q. B.) 558 ; 31 W. R. 712, C. A. 175
Wallasey Local Board *v.* Gracey (1887), 36 Ch. D. 593 ; 51 J. P. 740 ; 56 L. J. (CH.) 739 ; 57 L. T. 51 ; 35 W. R. 694 390
Wallenstein *v.* Herbert (1867), 16 L. T. (N. S.) 453 ; 15 W. R. 838, C. A. . 137, 176
Walley *v.* McConnell (1849), 13 Q. B. 903 ; 19 L. J. (Q. B.) 162 ; 14 Jur. 193 . 425
Walsh, *Re* (1853), 1 E. & B. 383 ; 22 L. J. (Q. B.) 137 ; 17 Jur. 596 . . . 613
——— *v.* Lonsdale (1882), 21 Ch. D. 9 ; 52 L. J. (CH.) 2 ; 46 L. T. 858 ; 31 W. R. 109, C. A. 445
——— *v.* Smith (1874), 30 L. T. 304 ; 22 W. R. 576 438
Walter *v.* Emmott (1885), 54 L. J. (CH.) 1059 ; 53 L. T. 437, C. A. . . . 144
——— *v.* Howe (1881), 17 Ch. D. 708 ; 50 L. J. (CH.) 621 ; 44 L. T. 727 ; 29 W. R. 776 142, 148, 154
——— *v.* Lane, [1900] A. C. 539 ; 69 L. J. (CH.) 699 ; 83 L. T. 289 ; 16 T. L. R. 551 ; 49 W. R. 95 137, 143, 151
——— *v.* Steinkopff, [1892] 3 Ch. 489 ; 61 L. J. (CH.) 521 ; 67 L. T. 184 ; 40 W. R. 599 147, 165
——— *v.* Webb (1870), 5 Ch. App. 531 ; 39 L. J. (CH.) 677 ; 18 W. R. 587 . 106
Walton-cum-Trimley (Manor), *Re*, *Ex parte* Tomline (1873), 28 L. T. (N. S.) 12 ; 21 W. R. 475 4, 18
Ward, *Re*, (1861), 3 De G. F. & J. 700 ; 30 L. J. (CH.) 775 ; 7 Jur. (N. S.) 853 ; 4 L. T. 458 ; 9 W. R. 843 251, 252, 254, 262
—— *v.* Haddrill, [1904] 1 K. B. 399 ; 73 L. J. (K. B.) 277 ; 52 W. R. 398 ; 90 L. T. 232 553
—— *v.* Society of Attornies (1844), 1 Coll. 370 318, 397, 398
—— *v.* Wyld (1877), 5 Ch. D. 779 ; 37 L. T. 68 ; 25 W. R. 866 446
——, Lock & Co., Ltd. *v.* Long, [1906] 2 Ch. 550 ; 75 L. J. (CH.) 732 ; 95 L. T. 345 ; 22 T. L. R. 798 137, 148, 158
Ware *v.* Grand Junction Waterworks Co. (1831), 2 Russ. & M. 470 . . 318, 321
Warne *v.* Lawrence (1886), 54 L. T. 371 ; 34 W. R. 452 141, 152
——— *v.* Routledge (1874), L. R. 18 Eq. 497 ; 43 L. J. (CH.) 604 ; 30 L. T. 857 ; 22 W. R. 750 161, 162
——— & Co. *v.* Seebohm (1888), 39 Ch. D. 73 ; 57 L. J. (CH.) 689 ; 58 L. T. 928 ; 36 W. R. 686 163, 167, 183
Warren, *Ex parte*, *Re* Holland. *See* Holland, *Re*, *Ex parte* Warren.
Warrick *v.* Queen's College, Oxford (1867), L. R. 3 Eq. 683 ; 36 L. J. (CH.) 505 16
——— *v.* ——— ——— ——— (1871), 6 Ch. App. 716 368
Warwick Deeping, *Ex parte*, *Re* Grant Richards. *See* Grant Richards, *Re*, *Ex parte* Warwick Deeping.
Wase *v.* Pretty (1621), Win. 3 29
Watson, *Ex parte*, *Re* Companies Acts. *See* Companies Acts, *Re*, *Ex parte* Watson.
———, *Re*, Stamford Union *v.* Bartlett, [1899] 1 Ch. 72 ; 68 L. J. (CH.) 21 ; 79 L. T. 462 ; 47 W. R. 359 ; 7 Mans. 97 670
——— *v.* Hemsworth Hospital (Master) (1807), 14 Ves. 324 376
——— *v.* Hythe Corporation (1906), 70 J. P. 153 ; 22 T. L. R. 245 ; 4 L. G. R. 340 365
——— *v.* Petts (No. 2), [1899] 1 Q. B. 430 ; 68 L. J. (Q. B.) 249 ; 80 L. T. 21 ; 15 T. L. R. 174 579, 580
——— *v.* White, [1896] 2 Q. B. 9 ; 65 L. J. (Q. B.) 492 ; 74 L. T. 702 ; 44 W. R. 525 425
Weatherley *v.* Calder & Co. (1889), 61 L. T. 508 449
Weaver *v.* Kinglake (1830), 9 L. J. (O. S.) (CH.) 20 94, 103
——— *v.* Maule (1830), 2 Russ. & M. 97 81, 91, 103
Web *v.* Paternoster (1619), Palm. 71 370
Webster, *Ex parte* (1802), 6 Ves. 809 369
——— *v.* Allen (1602), Moore (K. B.), 677 97
——— *v.* Armstrong (1885), 54 L. J. (Q. B.) 236 ; 1 Cab. & El. 471 . 418, 534
Weld *v.* Wiggett (1674), 1 Freem. (K. B.) 320 319
Weldon *v.* Dicks (1878), 10 Ch. D. 247 ; 48 L. J. (CH.) 231 ; 39 L. T. 467 ; 27 W. R. 639 143, 152, 153, 169
——— *v.* Moignard (1889), 87 L. T. 356 268
Wellesley (Viscount) *v.* Withers (1855), 24 L. J. (Q. B.) 134 ; 4 E. & B. 750 ; 1 Jur. (N. S.) 706 ; 3 C. L. R. 1187 107

PAGE
Wells *v.* Kingston-upon-Hull Corporation (1875), L. R. 10 C. P. 402 ; 44 L. J. (C. P.) 257 ; 32 L. T. 615 ; 23 W. R. 562 383
Welpley *v.* Buhl (1878), 3 Q. B. 253 ; 47 L. J. (Q. B.) 151 ; 38 L. T. 115 ; 26 W. R. 300, C. A. 440
Welsbach Incandescent Gas Lighting Co. *v.* New Sunlight Incandescent Co., [1900] 2 Ch. 1 ; 69 L. J. (CH.) 546 ; 83 L. T. 58 ; 17 R. P. C. 401 ; 48 W. R. 595, C. A. 396
Wenlock (Baroness) *v.* River Dee Co. (1883), 36 Ch. D. 675 ; 19 Q. B. D. 155, C. A. ; affirmed (1885), 10 App. Cas. 354 ; 49 J. P. 773 ; 54 L. J. (Q. B.) 577 ; 53 L. T. 62 359, 360, 363, 364
Wentworth (Lady) *v.* Clay (1676), Cas. *temp.* Finch, 263 11
——— *v.* Turner (1795), 3 Ves. 3 52
Werderman *v.* Société Générale d'Electricité (1881), 19 Ch. D. 246, C. A. . . 160
West *v.* Bristol Tramways Corporation, [1908] 2 K. B. 14 ; 72 J. P. 243 ; 77 L. J. (K. B.) 684 ; 99 L. T. 264 ; 24 T. L. R. 478 ; 52 Sol. Jo. 393 ; 6 L. G. R. 609, C. A. 389
——— *v.* Francis (1822), 5 B. & Ald. 737 ; 1 Dow. & Ry. 400 204
West of England and South Wales District Bank, *Re*, *Ex parte* Swansea Friendly Society (1879), 11 Ch. D. 768 ; 48 L. J. (CH.) 577 ; 40 L. T. 551 ; 27 W. R. 596 358
West Riding of Yorkshire Rivers Board *v.* Ravensthorpe Urban District Council (1907), 71 J. P. 209 ; 5 L. G. R. 347 682
Western *v.* Bailey, [1897] 1 Q. B. 86 ; 66 L. J. (Q. B.) 48 ; 75 L. T. 470 ; 45 W. R. 115, C. A. 38, 40, 43
Westgate *v.* Crowe (1907), 24 T. L. R. 14 539
——— *v.* ———, [1908] 1 K. B. 24 ; 77 L. J. (K. B.) 10 ; 97 L. T. 769 ; 24 T. L. R. 14 579
Westman *v.* Aktiebolaget Ekmans Mekaniska Schnickarefabrik (1876), 1 Ex. D. 237 ; 47 L. J. (EX.) 327 ; 24 W. R. 405 395
Westmoreland's (Earl) Case (1575), 3 Leon. 59 70
Weston *v.* Coulson (1764), 1 Wm. Bl. 506 248
——— *v.* Sneyd (1857), 1 H. & N. 703 ; 26 L. J. (EX.) 161 ; 5 W. R. 317 . 491, 611
Wetherfield *v.* Nelson (1869), L. R. 4 C. P. 571 ; 38 L. J. (C. P.) 220 ; 20 L. T. 366 ; 17 W. R. 651 420, 617
Wharton *v.* King (1796), 3 Anst. 659 76
Wheeler *v.* Twogood's Case (1588), 1 Leon. 118 12
Whistler's Case (1613), 10 Co. Rep. 63 a. 19, 370
Whiston *v.* Rochester (Dean and Chapter) (1849), 7 Hare, 532 ; 18 L. J. (CH.) 473 ; 13 Jur. 694 356
Whitbread *v.* Jordan (1833), 1 Y. & C. (EX.) 303 ; 4 L. J. (EX. EQ.) 38 . . . 94
Whitchurch *v.* Paget (1662), 1 Sid. 74 ; Sty. 208 ; 1 Keb. 258, 274 . . . 61
White *v.* Cohen, [1893] 1 Q. B. 580 ; 62 L. J. (Q. B.) 274 ; 4 R. 352 ; 68 L. T. 305 ; 41 W. R. 396, C. A. 586, 587
——— *v.* Geroch (1819), 2 B. & Ald. 298 ; 1 Chitt. 24 137, 163
——— *v.* Headland's Patent Electric Storage Battery Co., [1899] 1 Q. B. 507 ; 68 L. J. (Q. B.) 354 ; 80 L. T. 442 ; 47 W. R. 273 ; 15 T. L. R. 189, C. A. 587
——— *v.* Morley, [1899] 2 Q. B. 34 ; 63 J. P. 550 ; 68 L. J. (Q. B.) 702 ; 83 L. T. 761 ; 15 T. L. R. 360 ; 19 Cox, C. C. 345 ; 47 W. R. 583 . 337, 338
——— *v.* Morris (1852), 11 C. B. 1015 ; 21 L. J. (C. P.) 185 ; 16 Jur. 500 . . 426
——— *v.* White, [1898] P. 124 ; 67 L. J. (P.) 63 584
——— & Co. *v.* Milne (1887), 58 L. T. 225 602
Whitechurch *v.* Holworthy (1815), 4 M. & S. 344 ; 19 Ves. 213 24
Whitehouse *v.* Birmingham Canal Co. (1858), 27 L. J. (EX.) 25 389
Whiteley *v.* Taylor (1876), 35 L. T. 187, C. A. 28
Whiteman *v.* Hawkins (1878), 4 C. P. D. 13 ; 39 L. T. 629 ; 27 W. R. 262 . . 609
Whitfield *v.* Hunt (1784), 2 Doug. (K. B.) 727, n. 32, 33
——— *v.* South Eastern Rail. Co. (1858), E. B. & E. 115 ; 27 L. J. (Q. B.) 229 ; 4 Jur. (N. S.) 688 ; 6 W. R. 545 387, 391
Whitmore-Scarle *v.* Whitmore-Scarle, [1907] 2 Ch. 332 ; 76 L. J. (CH.) 576 ; 97 L. T. 160 72
Whittingham *v.* Wooler (1817), 2 Swan. 428 147
Whitton *v.* Peacock (1834), 3 My. & K. 325 52, 93
Wickham *v.* Lee (1848), 12 Q. B. 521 ; 18 L. J. (Q. B.), 21 ; 12 Jur. 628 . 430, 459
Wigan *v.* Strange (1865), L. R. 1 C. P. 175 ; 35 L. J. (M. C.) 31 ; 12 Jur. (N. S.) 9 ; 13 L. T. 371 ; 14 W. R. 103 187
Wightwick *v.* Pope, [1902] 2 K. B. 99 ; 71 L. J. (CH.) 709 ; 86 L. T. 750 ; 18 T. L. R. 639 ; 50 W. R. 531, C. A. 607

PAGE
Wigram *v.* Cox, Sons, Buckley & Co., [1894] 1 Q. B. 792; 63 L. J. (Q. B.) 751; 70 L. T. 656 553, 556
Wilberforce *v.* Sowton (1878), 48 L. J. (C. P.) 28; 39 L. T. 474 606
Wilkes *v.* Broadbent (1744), 1 Wils. 63 9
Wilkins *v.* Aikin (1810), 1 Ves. 422; 11 R. R. 118; 7 Ves. 427 145, 147
Wilkinson, *Re*, Esam *v.* A.-G., [1902] 1 Ch. 841; 71 L. J. (CH.) 663, n.; 87 L. T. 40. 367
——— *v.* Jagger (1887), 20 Q. B. D. 423; 52 J. P. 533; 57 L. J. (Q. B.) 254; 58 L. T. 487; 36 W. R. 169 603, 649
Willcock *v.* Terrell (1878), 3 Ex. D. 323; 39 L. T. 84, C. A. 417
Willey *v.* Hucks (1909), 78 L. J. (K. B.) 513; 100 L. T. 333 566
Williams *v.* Barmouth Urban District Council (1897), 77 L. T. 383, C. A. 381, 384
——— *v.* Evans (1875), L. R. 19 Eq. 547; 44 L. J. (CH.) 319; 32 L. T. 359; 23 W. R. 466 608
——— *v.* Taperell (1892), 92 L. T. Jo. 213 606
——— *v.* Williams (1867), 37 L. J. (CH.) 854 603
Williamson *v.* Bissill (1861), 7 H. & N. 391; 31 L. J. (EX.) 131; 8 Jur. (N. S.) 42; 5 L. T. 321; 10 W. R. 109 437
Willis *v.* Lovick, [1901] 2 K. B. 195; 70 L. J. (K. B.) 656; 84 L. T. 713; 49 W. R. 540 485
——— *v.* Thorp (1875), L. R. 13 Q. B. 383; 44 L. J. (Q. B.) 137; 33 L. T. 11; 23 W. R. 730 655
——— *v.* Willis (1865), 34 Beav. 340; 34 L. J. (CH.) 313; 13 W. R. 77 . . 79
Willowe's Case (1608), 13 Co. Rep. 3 30
Wills *v.* Tozer (1904), 20 T. L. R. 700; 53 W. R. 74 358
Wilmot *v.* Coventry Corporation (1835), 1 Y. & C. (EX.) 518 385
Wilson *v.* Allen (1820), 1 Jac. & W. 611 93, 95, 110, 112
——— *v.* Dennison (1750), 1 Amb. 12 352
——— *v.* Hoare (1839), 10 Ad. & El. 236; 2 Per. & Dav. 659 35
——— *v.* Statham, [1891] 2 Q. B. 261; 60 L. J. (Q. B.) 725; 39 W. R. 686 . 587, 599, 602
——— *v.* West Hartlepool Harbour Co. (1864), 34 Beav. 187; affirmed 2 De G. J. & Sm. 475 381, 388
——— *v.* Willes (1806), 7 East, 121; 3 Smith (K. B.), 167; 7 East, 121 . . 4
Wilson's (Sir T. M.) Estate, *Re* (1863), 3 De G. J. & Sm. 410; 32 L. J. (CH.) 191; 7 L. T. 722; 11 W. R. 294 29
Winch *v.* Thames Conservators (1874), L. R. 9 C. P. 378; 43 L. J. (C. P.) 167; 31 L. T. 128; 22 W. R. 879. 389
——— *v.* Winch (1853), 13 C. B. 128; 22 L. J. (C. P.) 104; 17 Jur. 88; 1 W. R. 131 428, 445
Winchester (Bishop) *v.* Knight (1717), 1 P. Wms. 406 22, 23
Windham *v.* Giubilei (1871), 24 L. T. 653; 40 L. J. (CH.) 505 16
Winfield *v.* Borthroyd (1886), 54 L. T. 574; 34 W. R. 501 . . . 429, 569, 591
Winne *v.* Bampton (1747), 3 Atk. 473 375
Winsor *v.* Dunford (1848), 12 Q. B. 603; 18 L. J. (Q. B.) 14; 12 Jur. 629 . 428, 613, 614
Winton Corporation *v.* Wilks (1705), 2 Ld. Raym. 1129 377
Wirty *v.* Pemberton (1708), 2 Eq. Cas. Abr. 279 42
Withers *v.* Withers (1752), 1 Amb. 151 75
Withipole's (Sir William) Case (1628), Cro. Car. 134; Sir J. Jervis on Coroners (1829), 223 261
Wohlgemuthe *v.* Caste, [1899] 1 Q. B. 501; 68 L. J. (Q. B.) 373; 80 L. T. 529 . 604
Wolff *v.* Wood (1903), *Times*, October 31, 1903 198
Wolverhampton New Waterworks Co. *v.* Hawkesford (1859), 6 C. B. (N. S.) 336; 28 L. J. (C. P.) 242; 5 Jur. (N. S.) 1104; 7 W. R. 464 390
Wood *v.* Anderston Foundry Co. (1888), 36 W. R. 918 395
——— *v.* Boosey (1867), L. R. 2 Q. B. 340; 7 B. & S. 869; 36 L. J. (Q. B.) 103; 15 L. T. 530; 15 W. R. 309; (1868), 9 B. & S. 175; L. R. 3 Q. B. 223; 37 L. J. (Q. B.) 84; 18 L. T. 105; 16 W. R. 485 . 137, 152, 153, 182, 187
——— *v.* Chart (1870), L. R. 10 Eq. 193; 39 L. J. (CH.) 641; 22 L. T. 432; 18 W. R. 822 150, 184, 185
——— *v.* Lambirth (1841), 1 Ph. 8; 5 Jur. 741 80
——— *v.* Perry (1849), 3 Exch. 442; 6 Dow. & L. 194; 18 L. J. (EX.) 161 . 451, 459
——— *v.* Tate (1806), 2 Bos. & P. (N. R.) 247 376
Wooderson *v.* Tuck (Raphael) & Sons (1887), 4 T. L. R. 57 153
Woodhams *v.* Newman (1849), 7 C. B. 654; 6 Dow. & L. 683; 18 L. J. (C. P.) 213; 13 Jur. 456 429
Woodin *v.* Bailey (1894), 98 L. T. Jo. 89 587

PAGE
Woolbridge Union Guardians *v.* Colneis Guardians (1849), 13 Q. B. 269 . . 399
Woolley *v.* Broad, [1892] 1 Q. B. 806; 9 R. P. C. 208 161
Woolway *v.* Rowe (1834), 1 Ad. & El. 114; 3 Nev. & M. 849; 3 L. J. (K. B.) 121 18
Workingham Corporation *v.* Johnson (1736), Lee *temp.* Hard. 284 . . . 339
Worledge *v.* Benbury (1617), Cro. Jac. 436 54
Worral Waterworks Co. *v.* Lloyd (1866), L. R. 1 C. P. 719 396
Worth, *Re* (1881), 18 Ch. D. 521; 50 L. J. (CH.) 262; 44 L. T. 462; 29 W. R. 371 599
Worthington *v.* Hulton (1865), L. R. 1 Q. B. 63; 6 B. & S. 943; 35 L. J. (Q. B.) 61; 12 Jur. (N. S.) 73; 13 L. T. 463; 14 W. R. 632 . . 396
——— *v.* Jeffries (1875), L. R. 10 C. P. 379; 44 L. J. (C. P.) 209; 32 L. T. 606: 23 W. R. 750 612
Wragg, Ltd., *Re*, [1897] 1 Ch. 796; 66 L. J. (CH.) 419; 76 L. T. 397; 45 W. R. 557, C. A. 302
Wrexham, Mold and Connah's Quay Rail. Co., [1899] 1 Ch. 440; 68 L. J. (CH.) 270; 80 L. T. 130; 15 T. L. R. 122; 6 Mans. 218; 47 W. R. 464, C. A. . 324
Wright *v.* Goodlake (1865), 13 L. T. 120; 3 H & C. 540; 34 L. J. (EX.) 82; 12 Jur. (N. S.) 14; 13 L. T. 120; 13 W. R. 349 169
——— *v.* Kemp (1789), 3 Term Rep. 470 15
——— *v.* Tallis (1845), 1 C. B. 893; 14 L. J. (C. P.) 283; 9 Jur. 946. . . 148
——— & Son *v.* Bull, [1900] 2 Q. B. 124; 69 L. J. (Q. B.) 529; 82 L. T. 568 . 588
Wrightson, *Ex parte*, R. *v.* Southwold Corporation. *See* R. *v.* Southwold Corporation, *Ex parte* Wrightson.
Wroth's (Sir Thomas) Case (1573), 2 Plowd. 457 370
Wyatt *v.* Barnard (1814), 3 Ves. & B. 77 143, 147, 150, 165
Wych *v.* Meal (1734), 3 P. Wms. 310 391, 392
Wynne *v.* Cookes (1780), 1 Bro. C. C. 515 110, 113
Wyoming (State of) Syndicate, *Re*, [1901] 2 Ch. 431; 70 L. J. (CH.) 727; 84 L. T. 868; 17 T. L. R. 631; 49 W. R. 650 341

Y.

YABBICOM *v.* King, [1899] 1 Q. B. 444; 63 J. P. 149; 68 L. J. (Q. B.) 560; 80 L. T. 159; 47 W. R. 318 340
Yarborough *v.* Bank of England (1812), 16 East, 6 386, 387
Yarmouth Corporation *v.* Cowper (1629), Godb. 439 309
Yaxley *v.* Rainer (1695) 1 Ld. Raym. 44 27
York and North Midland Rail. Co. *v.* R. (1853), 1 E. & B. 858; 7 Ry. & Can. Cas. 459; 1 C. L. R. 119; 22 L. J. (Q. B.) 225; 17 Jur. 633; 1 W. R. 358 . 360
York's (Abbot) Case, 10 Co. Rep. 125 b 308
Young *v.* Brompton, Chatham etc. Waterworks Co., R. *v.* Kent County Court (Registrar) (1861), 1 B. & S. 675; 31 L. J. (Q. B.) 14; 8 Jur. (N. S.) 176; 5 L. T. 310; 10 W. R. 57 379, 490, 601
——— *v.* Naval, Military and Civil Service Co-operative Society of South Africa, Ltd., [1905] 1 K. B. 687; 74 L. J. (K. B.) 302; 92 L. T. 458; 53 W. R. 447; 21 T. L. R. 293; 2 Mans. 212 365
——— *v.* Payne (David) & Co., Ltd., Payne (David) & Co., Ltd., *Re*. *See* Payne (David) & Co., Ltd., *Re*, Young *v.* Payne (David) & Co., Ltd.
——— & Co. *v.* Royal Leamington Spa Corporation (1883), 8 App. Cas. 517; 47 J. P. 660; 52 L. J. (Q. B.) 713; 49 L. T. 1; 31 W. R. 925 . . 380, 386
Yuill *v.* Greymouth Point Elizabeth Rail. and Coal Co., Ltd., *Re* Greymouth Point Elizabeth Rail. and Coal Co., Ltd. *See* Greymouth Point Elizabeth Rail. and Coal Co., Ltd., Yuill *v.* Greymouth Point Elizabeth Rail. and Coal Co., Ltd.

Z.

ZEALLEY *v.* Veryard (1866), L. R. 1 P. & D. 195; 35 L. J. (P.) 127; 14 L. T. 769; 14 W. R. 970 645, 646
Zouche (Lord) *v.* Dalbiac (1875), L. R. 10 Exch. 172; 44 L. J. (EX.) 109; 33 L. T. 221; 23 W. R. 564 45

COPYHOLDS.

PAGE

PART I. MANORS - - - - - - - - - - - - 3

SECT. 1. NATURE AND ORIGIN OF MANORS - - - - 3

Sub-sect. 1. Creation and Extent of Manors - - - 3
Sub-sect. 2. Manorial Lands - - - - - - - 5
Sub-sect. 3. Miscellaneous Franchises - - - - 5
Sub-sect. 4. Manorial Customs generally - - - - 7
Sub-sect. 5. Manorial Courts - - - - - - - 10
Sub-sect. 6. The Court Rolls - - - - - - - 14

SECT. 2. EVIDENCE AS TO THE EXISTENCE AND EXTENT OF A MANOR - - - - - - - - - - - 18

SECT. 3. TRANSMISSION AND DIVISION OF MANORS - - - 19

SECT. 4. DESTRUCTION (MERGER, SEVERANCE, INCLOSURE ETC.) OF MANORS - - - - - - - - - - - 20

PART II. THE LORD OF THE MANOR - - - - - - 22

SECT. 1. THE LORD'S RIGHTS - - - - - - - - 22

Sub-sect. 1. Mines and Minerals - - - - - - 22
Sub-sect. 2. Trees and Sporting- - - - - - - 24
Sub-sect. 3. Fines - - - - - - - - - - 26
Sub-sect. 4. Heriots - - - - - - - - - - 37
Sub-sect. 5. Reliefs - - - - - - - - - - 45
Sub-sect. 6. Quit-rents, Rents of Assize, and other Services 46
Sub-sect. 7. Forfeiture for Waste, Alienation, and Crime - 46
Sub-sect. 8. Licence - - - - - - - - - 52
Sub-sect. 9. Escheat - - - - - - - - - 54

SECT. 2. THE LORD'S REMEDIES - - - - - - - - 56

Sub-sect. 1. Seizure - - - - - - - - - - 56
Sub-sect. 2. Distress - - - - - - - - - 58
Sub-sect. 3. Action for Debt - - - - - - - 59

PART III. OFFICERS OF THE MANOR - - - - - - 59

SECT. 1. THE LORD'S STEWARD - - - - - - - - 59

Sub-sect. 1. Nature of his Office - - - - - - 59
Sub-sect. 2. Appointment - - - - - - - - 60
Sub-sect. 3. Powers and Duties - - - - - - - 61
Sub-sect. 4. Fees and Charges - - - - - - - 63

SECT. 2. THE BAILIFF - - - - - - - - - - 65

PART IV. THE TENANT OF THE MANOR - - - - - - 65

SECT. 1. WHO MAY BE TENANT - - - - - - - - 65

SECT. 2. NATURE OF THE TENANT'S ESTATE - - - - - 68

Sub-sect. 1. Generally - - - - - - - - - 68
Sub-sect. 2. Fee Conditional and Fee Tail - - - - 70

PART IV. THE TENANT OF THE MANOR—*continued.* PAGE

SECT. 2. NATURE OF THE TENANT'S ESTATE—*continued.*

Sub-sect. 3. Estates for Life - - - - - - 73
Sub-sect. 4. Estates *pur autre vie* - - - - - 74
Sub-sect. 5. Estates for Years - - - - - - 76
Sub-sect. 6. Estates in Remainder - - - - - 77
Sub-sect. 7. Estates in Reversion - - - - - 77
Sub-sect. 8. Curtesy - - - - - - - 78
Sub-sect. 9. Dower or Freebench - - - - - 78
Sub-sect. 10. Guardianship - - - - - - 80
Sub-sect. 11. Trust Estates - - - - - - 81

SECT. 3. CREATION OF THE TENANT'S ESTATE - - - - 82

Sub-sect. 1. By Grant - - - - - - - - 82
Sub-sect. 2. By Statute - - - - - - - - 86

SECT. 4. TRANSMISSION OF THE TENANT'S ESTATE - - - 86

Sub-sect. 1. By Descent or Statute - - - - - 86
Sub-sect. 2. By Surrender and Admittance - - - 89
Sub-sect. 3. By Deed - - - - - - - - 107
Sub-sect. 4. By Will - - - - - - - - 109

SECT. 5. DESTRUCTION OF THE TENANT'S ESTATE BY SURRENDER, MERGER, AND ESCHEAT AND FORFEITURE - - - 109

PART V. ENFRANCHISEMENT - - - - - - - - 111

SECT. 1. AT COMMON LAW - - - - - - - - 111

SECT. 2. UNDER THE COPYHOLD ACT, 1894 - - - - 114

Sub-sect. 1. The Right to enfranchise - - - - 114
Sub-sect. 2. Preliminary Requirements - - - - 117
Sub-sect. 3. Compensation for Enfranchisement - - - 119
Sub-sect. 4. Valuation - - - - - - - - 123
Sub-sect. 5. Expenses of Enfranchisement - - - 124
Sub-sect. 6. Award - - - - - - - - - 125
Sub-sect. 7. Effect of Enfranchisement under the Act - 126
Sub-sect. 8. Powers and Duties of Board of Agriculture and Fisheries - - - - - - - - 128
Sub-sect. 9. Application of the Act to the Crown and Duchy of Lancaster - - - - - - - 129

SECT. 3. UNDER MISCELLANEOUS STATUTES - - - - 129

Sub-sect. 1. Lands Clauses Consolidation Act, 1845 - - 129
Sub-sect. 2. Settled Estates Act, 1877 - - - - 130
Sub-sect. 3. Settled Land Act, 1882 - - - - - 130
Sub-sect. 4. Ecclesiastical Estates Act, 1851 - - - 131
Sub-sect. 5. Universities and College Estates Act, 1898 - 131
Sub-sect. 6. Crown Lands Act, 1829 - - - - - 132
Sub-sect. 7. Duchy of Lancaster Acts - - - - 133
Sub-sect. 8. Duchy of Cornwall Acts - - - - 133
Sub-sect. 9. Charitable Trusts Acts, 1853 to 1891 - - 134

For Local Customs - - - *See title* CUSTOM AND USAGES.
Rights of Common - - ,, COMMONS AND RIGHTS OF COMMON.

Part I.—Manors.

SECT. 1.—*Nature and Origin of Manors.*

SECT. 1. Nature and Origin of Manors.

SUB-SECT. 1.—*Creation and Extent of Manors.*

Origin of manor.

1. Before the Statute of "Quia Emptores" (*a*), when the King gave land to one of his subjects and his heirs to hold of the King and his heirs, and the subject, after selecting a portion thereof for his own particular occupation, parcelled out the whole or the greater part of the residue to his subordinates to be held of him in return for certain services to be paid or rendered to him by such subordinates, the subject had what was subsequently called a manor (*b*). By the Statute of "Quia Emptores" the creation of new manors was rendered impossible except by express statutory enactment (*c*) or by the Crown under a custom existing before the passing of that statute (*d*).

Definition.

2. The nearest approach to an authoritative definition of a manor without being an exact definition is, that it is the seisin of a defined district, with the power of subinfeudation therein, and the existence of freeholders holding of the manor, and the right to a court baron, in which the feudatories are judges (*e*).

The lord.

3. The owner of a manor is called the lord of the manor. If the land allotted to the subject by the King was sufficiently large to allow of his subordinates in their turn constituting other manors within the parcels allotted to them, the subject, who was called a "tenant *in capite*" or a "lord paramount," was said to have an "honour," and his subordinates were inferior lords or "mesne lords" (*f*). A manor may be part of or appendant to a bishop's see, a rectory, or a parsonage (*g*), or a prebend (*h*), or it may be held of another manor by copy of court roll (*i*). A manor may also belong to the Crown (*k*) or to the Duchies of Lancaster and Cornwall. The King is lord of the manors belonging to the Crown,

(*a*) 18 Edw. 1, c. 1 (1290).

(*b*) See Scriven on Copyholds, 7th ed., p. 2, quoting from Perkins' Treatise on the Laws of England, written about 1532 and published in the reign of Edward VI.; Kitchin on Courts Leet, 2nd ed. (1653), p. 7.

(*c*) Watkins on Copyholds, 4th ed. (Coventry's) (1825), Vol. II., p. 11. As to the authority of Watkins on Copyholds, frequent references to which will be found in the notes to this article, see *Ecclesiastical Commissioners* v. *Parr*, [1894] 2 Q. B. 420, *per* Lord ESHER, M.R., at p. 428. For an instance of a manor so created, see *Delacherois* v. *Delacherois* (1864), 11 H. L. Cas. 62.

(*d*) *Parrott* v. *Watts* (1877), 37 L. T. 755, *per* LINDLEY, J., at p. 757.

(*e*) *Delacherois* v. *Delacherois, supra, per* WILLES, J., at p. 83. As to the derivation of the word "manor," see Watkins on Copyholds, Vol. I., p. 7, and Scriven on Copyholds, p. 1. A manor is sometimes called a "lordship" or "seignory." As to a customary manor, see p. 4, *post*.

(*f*) Watkins on Copyholds, Vol. I., p. 5; for instance, the honour of Pontefract referred to in *Hellawell* v. *Eastwood* (1850), 2 Exch. 295.

(*g*) *Dyke* v. *Bath and Wells (Bishop)* (1715), 6 Bro. Parl. Cas. 365; Watkins on Copyholds, Vol. I., p. 28.

(*h*) *Doe* d. *North* v. *Webber* (1837), 5 Scott, 189.

(*i*) *Nevil's (Sir H.) Case* (1612), 11 Co. Rep. 17 a.

(*k*) As, for instance, the manor of West Sheen or Richmond, in the county of Surrey, and many others.

SECT. 1. Nature and Origin of Manors.

although the management thereof is vested in the Commissioners of Woods and Forests. The legal estate is in the Crown (*l*).

Manor in gross.

4. Where the demesne lands (*m*) of a manor have become severed from the manor or lost, the manor will still subsist as a manor or seignory in gross (*n*).

Reputed manor.

5. Manors the existence of which can only be proved by evidence of reputation are called reputed manors (*o*); and if the manorial courts have ceased to exist because the number of free tenants owing suit of court has been reduced below two, or for other reasons, the manor will continue to exist as a reputed manor for certain purposes (*p*).

Extent of manor.

6. The extent of a manor depends upon what was comprised in the original grant by the Crown or superior lord, as the case may be, and may include the foreshore of the sea (*q*), and modern usage is admissible to explain the meaning of such a grant (*r*). So also in the grant of a royal manor with anchorage and groundage, but no express mention of the shore, a presumption may arise that the foreshore is included in the grant (*s*). The boundaries of a manor rarely extend over more than one parish though there are often many manors in one parish (*t*).

Roads and rivers.

As to the inclusion within a manor of the soil or bed of a road or river to the centre line thereof, the usual rules applicable in the case of ordinary freeholds apply (*a*). But there is a presumption, which is rebuttable (*b*), that waste land on the sides and the soil to the middle of a highway belong to the owner of the adjoining freehold, copyhold, or leasehold land, as the case may be, for a similar interest, and not to the lord of the manor or the lessor (*c*).

Customary manor.

When the lord of a manor comprising copyholds grants the inheritance of all the copyholds to another, the grantee thereby

(*l*) *R.* v. *Powell* (1841), 1 Q. B. 352. As to the Crown as owner of lands, see, generally, title CONSTITUTIONAL LAW, Vol. VII., pp. 111 *et seq.*

(*m*) As to what are demesne lands, see p. 5, *post*.

(*n*) Kitchin on Courts Leet, 2nd ed. (1653), p. 7; and see Watkins on Copyholds, Vol. I., p. 27; Cowell's Interpreter (1672), tit. Seigniory in grosse. The terms "seignory" and "lordship" are synonymous with "manor" (*ibid.*).

(*o*) Watkins on Copyholds, Vol. I., p. 27; *Steel* v. *Prickett* (1819), 2 Stark. 463, 466; and see *Doe* d. *Molesworth* v. *Sleeman* (1846), 9 Q. B. 298. For the purposes of the Conveyancing Acts, 1881, 1882, and 1892, and the Settled Land Acts, 1882 to 1890, the word "manor" includes lordship and reputed manor or lordship (44 & 45 Vict. c. 41, s. 2 (iv.); 45 & 46 Vict. c. 38, s. 2 (v.)). Similarly in the Copyhold Act, 1894, the expression "manor" includes a "reputed manor" (57 & 58 Vict. c. 46, s. 94); see *Doe* d. *Clayton* v. *Williams* (1843), 11 M. & W. 803.

(*p*) Scriven on Copyholds, p. 3; *Soane* v. *Ireland* (1808), 10 East, 259; *Curson* v. *Lomas* (1803), 5 Esp. 60; and see p. 20, *post*.

(*q*) *Re Walton-cum-Trimley (Manor), Ex parte Tomline* (1873), 28 L. T. 12.

(*r*) *Beaufort (Duke)* v. *Swansea Corporation* (1849), 3 Exch. 413; and see *Calmady* v. *Rowe* (1844), 6 C. B. 861.

(*s*) *Le Strange* v. *Rowe* (1866), 4 F. & F. 1048. Where the words of the grant are such that the foreshore might pass, extrinsic evidence, as for example of user, is admissible to show that it did pass (*A.-G. for Ireland* v. *Vandeleur*, [1907] A. C. 369).

(*t*) 1 Bl. Com. (1765), p. 109.

(*a*) See *Tilbury* v. *Silva* (1890), 45 Ch. D. 98, C. A.; and title BOUNDARIES AND FENCES, Vol. III., pp. 120 *et seq.*

(*b*) *Steel* v. *Prickett, supra*; *Dendy* v. *Simpson* (1856), 18 C. B. 831, Ex. Ch.; *A.-G.* v. *Moorsom-Roberts* (1908), 72 J. P. 123; *Corsellis* v. *London County Council*, [1908] 1 Ch. 13, C. A.

(*c*) *Doe* d. *Pring* v. *Pearsey* (1827), 7 B. & C. 304; and see *Scoones* v. *Morrell* (1839), 1 Beav. 251.

acquires, not a manor in law, for it wants free tenants, but a customary manor (*d*).

SUB-SECT. 2.—*Manorial Lands.*

Classification of manorial lands.

7. Manorial lands need not be inclosed by a single boundary or ring-fence, nor need they be contiguous. They may be scattered about amongst and intersected by other lands having nothing to do with the manor at all (*e*).

Manorial lands fall into two classes (*f*), namely,—

(1) Lands granted out by the lord to free tenants (*g*);

(2) The demesne lands, which fall into three categories (*h*), namely,—

i. Lands occupied by the lord himself (*i*). Lands belonging to this category are governed entirely by the general law of England (*j*).

ii. Lands which the lord allowed his servants and villeins (called *adscripti glebæ*) to occupy and cultivate or use upon certain terms, but originally entirely at the will and pleasure of the lord. From these have been evolved the copyhold lands of to-day (*k*).

iii. Lands allowed to lie waste or commons. These lands are subject to important rights as well of the free tenants and copyholders as of the lord (*l*).

SUB-SECT. 3.—*Miscellaneous Franchises.*

Franchises.

8. Special franchises, such as the right to waifs, estrays and wreck, are often vested in lords of manors, not as incident to the manor, but by special grant by the Crown, or by prescription (*m*). A franchise vested in a subject will merge and become absolutely extinct if it revert to the Crown (*n*).

Waifs.

9. Waifs (*bona waviata seu derelicta*) are goods which have been stolen and waived or abandoned by the thief (*o*). If the goods are handed over to another or hidden by the thief for safety (*p*), or if the thief is taken with the goods, or, having thrown away the goods, is pursued and captured by the true owner, or if the true

(*d*) *Melwich* v. *Luter* (1588), 4 Co. Rep. 26 a, 26 b.

(*e*) Scriven on Copyholds, p. 2. There are numerous instances of freehold lands being held of the lord of a manor by certain services without being parcel of the manor at all; see Williams on Seisin, p. 29.

(*f*) Watkins on Copyholds, Vol. I., pp. 4, 5, 6.

(*g*) As to the nature and characteristics of lands of this class, see p. 66, *post.*

(*h*) Watkins on Copyholds, Vol. I., p. 5.

(*i*) See *A.-G.* v. *Parsons* (1832), 2 Cr. & J. 279; *Chesterfield* (*Lord*) v. *Harris*, [1908] 1 Ch. 230, *per* NEVILLE, J., at p. 241; reversed on other points, [1908] 2 Ch. 397, C. A.

(*j*) See title REAL PROPERTY AND CHATTELS REAL.

(*k*) See p. 67, *post.* There are many manors in which there are not, and apparently never have been, any copyholds; see note (*g*), p. 11, *post.*

(*l*) For the law relating to commons and the respective rights and remedies of the lord of the manor or the owner of the soil and the free tenants and copyholders, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 443, 499, 514.

(*m*) Co. Litt. 114 b; *Dickens* v. *Shaw* (1823), *per* BAYLEY, J., reported in Hall on the Seashore, 2nd ed. (1875), Appendix, p. xlv.; *Scratton* v. *Brown* (1825), 4 B. & C. 485, 497. As to such franchises, see title CONSTITUTIONAL LAW, Vol. VI., pp. 489 *et seq.*

(*n*) *Strata Mercella* (*Abbot*) *Case* (1591), 9 Co. Rep. 24 a; *Northumberland* (*Duke*) v. *Houghton* (1870), L. R. 5 Exch. 127, *per* MARTIN, B., at p. 131.

(*o*) *Davies' Case* (1598), Cro. Eliz. 611; 1 Bl. Com. 296.

(*p*) *Foxley's Case* (1601), 5 Co. Rep. 109 a.

SECT. 1. Nature and Origin of Manors.

owner recovers possession of the goods before they are seized by the owner of the franchise, they are not waifs (*q*), and the owner of stolen goods who prosecutes the thief or receiver of the property to conviction can now obtain an order for restitution of the stolen property (*r*).

Estrays.

10. An estray is any tame animal found wandering about, the true owner of which is unknown. Primarily an estray belongs to the King, as general owner and lord paramount of the soil, as recompense for the damage it may have done whilst wandering about (*s*), and also in order that it may be preserved alive (*t*). By grant from the Crown or prescription, a subject, usually a lord of a manor, can acquire the right or franchise to seize estrays (*a*). Animals *feræ naturæ* cannot be estrays (*b*), but swans may be (*c*). The person entitled to the franchise may detain the animal until it is sufficiently proved who is its true owner (*d*); but the latter cannot regain possession without tendering compensation for its keep during detention (*e*). If the lord of a manor be the grantee of the franchise he must keep the animal in a place not merely within the manor, but parcel of the manor in the possession of the lord. The bailiff of the manor cannot delegate to another the duty of keeping an estray (*f*). The lord is liable for its proper custody, and if it escape he loses his right to it as an estray and may be liable for subsequent damage done by it (*g*). During detention the lord cannot work the animal (*h*), but if it be a milch cow he may milk it (*i*). If, after the estray has been taken, the seizure shall have been proclaimed in the church and two market towns next adjoining the place where the seizure was made, and no successful claim to recover the animal shall have been made within a year and a day from the date of seizure, the property in the estray becomes thereupon absolutely vested in the owner of the franchise (*k*). The proclamation should, however, specify the nature of the animal, *e.g.*, whether cow, horse, or sheep etc. (*l*).

Wreck.

11. At common law (*m*) wreck consists only of goods which are cast or left on land by the sea (*n*). In order that the title to wreck

(*q*) *Dickson's Case* (1627), Het. 64.
(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100; see titles CRIMINAL LAW AND PROCEDURE; SALE OF GOODS.
(*s*) 1 Bl. Com. 297; see, generally, title ANIMALS, Vol. I., pp. 375 *et seq.*
(*t*) *Taylor and Jame's Case* (1607), Godb. 150.
(*a*) Co. Litt. 114 b; 1 Bl. Com. 297.
(*b*) 1 Bl. Com. 298.
(*c*) *Swans' Case* (1592), 7 Co. Rep. 15 b.
(*d*) *Taylor and Jame's Case, supra.*
(*e*) *Ibid.*; *Pleydell* v. *Gossmoore* (1623), Hut. 67.
(*f*) *Taylor and Jame's Case, supra.*
(*g*) *Pleydell* v. *Gossmoore, supra.*
(*h*) *Ibid.*; *Oxley* v. *Watts* (1785), 1 Term Rep. 12.
(*i*) *Bagshawe* v. *Goward* (1607), Cro. Jac. 147.
(*k*) 1 Bl. Com. 297; *Burdet* v. *Mathewman* (1632), Clay. 107. Incapacity of the true owner seems to be immaterial (*ibid.*).
(*l*) *Taylor and Jame's Case, supra.*
(*m*) By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), Part IX., s. 510, wreck is interpreted to include "jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water." See, generally, title ADMIRALTY, Vol. I., p. 76.
(*n*) *Constable's* (*Sir Henry*) *Case* (1601), 5 Co. Rep. 106 a (cited in *Cargo ex*

may become absolute it is necessary that the goods come to land and be not successfully claimed by the true owner within a year and a day from the seizure as wreck by the owner of the franchise (*o*). The right to wreck and the right to the soil on which it may be cast belong primarily to the Crown, but the Crown may grant both or the one or the other alone to a subject (*p*); express words, however, must be used in the grant (*q*).

A presentment by the jurors or tenants of a manor that the lord is entitled to wreck is not admissible as evidence to prove the lord's right to the franchise (*r*). Wrecks are now subject to statutory enactment (*s*).

Fisheries and other franchises.

12. Certain other franchises are often found attached to manors, such as the right to take the goods and chattels of suicides and felons within the manor, treasure trove, and tolls (*t*), also the right to hold markets and fairs and to enjoy rights of chase, free warren, fishery, and the like; but franchises such as these are mere adjuncts, and not incidents or essential to manors generally (*u*).

A right of presentation to a hospital cannot be annexed to a manor so as to be inseparable from it, but may be alienated apart from the manor (*x*). Again, the office of woodward or forester, which is an office of trust, cannot be annexed to a manor (*y*).

Reputation and declarations of deceased persons are admissible to prove the lord's right by prescription to free warren over an entire manor (*a*). If the lord claims a several fishery in a river flowing through inclosed lands within the bounds of the manor, he must establish his right by evidence (*b*).

SUB-SECT. 4.—*Manorial Customs generally.*

Customs.

13. The rights, powers, and duties of both the lord and the tenants, freehold and copyhold, of a manor are governed to a

Schiller (1877), 2 P. D. 145, C. A., *per* BRETT, L.J., at p. 147), where the meaning of the terms flotsam, jetsam, and lagan (or ligan) is stated to be as follows:—Flotsam is when a ship is sunk or otherwise perished, and the goods float on the sea. Jetsam is when the ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and afterwards, notwithstanding, the ship perish. Lagan is when the goods which are so cast into the sea, and afterwards the ship perishes, and such goods cast are so heavy that they sink to the bottom, having been previously buoyed so that they may be found again.

(*o*) *Constable's (Sir Henry) Case* (1601), 5 Co. Rep. 106; and see 1 Bl. Com. 291.

(*p*) *Dickens* v. *Shaw* (1823), *per* BAYLEY, J., reported in Hall on the Seashore, 2nd ed. (1875), Appendix, p. xlv.

(*q*) *Scratton* v. *Brown* (1825), 4 B. & C. 485, *per* BAYLEY, J., at p. 497.

(*r*) *Talbot* v. *Lewis* (1834), 1 Cr. M. & R. 495.

(*s*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), Part IX.; see title ADMIRALTY, Vol. I., p. 76.

(*t*) *A.-G.* v. *Ayre* (1720), Bunb. 68. As to franchises, see titles CONSTITUTIONAL LAW, Vol. VI., pp. 489 *et seq.*; FISHERIES; GAME; MARKETS AND FAIRS; REAL PROPERTY AND CHATTELS REAL.

(*u*) A seignory in gross or a reputed manor, as to which see p. 4, *ante*, may be of value merely in order to support franchises such as those enumerated in the text.

(*x*) *A.-G.* v. *Ewelme Hospital* (1853), 17 Beav. 366.

(*y*) *A.-G.* v. *Mathias* (1858), 4 K. & J. 579; but the point is doubtful.

(*a*) *Carnarvon (Earl)* v. *Villebois* (1844), 13 M. & W. 313. As to free warren, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 501.

(*b*) *Lamb* v. *Newbiggin* (1844), 1 Car. & Kir. 549; and see title FISHERIES.

SECT. 1. Nature and Origin of Manors.

considerable extent by ancient laws or special customs (*c*), which differ from the general common law of England, and frequently vary in different manors. These customs regulate the mode of enjoyment of the lands within the manor, the power and mode by which manorial lands can be alienated, and the course of devolution of those lands upon the death of the owner. They are survivals of ancient local common law, which the general common law and statute law have recognised as enforceable and have left untouched. They are of equal authority with the general common law of England (*d*), and are equally binding upon the court (*e*).

Characteristics of manorial custom :— Local.

14. A manorial custom is always local, and must be distinguished from the general common law, which is universal (*f*), and from prescription, which is personal (*g*). It may be wholly unwritten, but is in many cases found recorded in ancient customaries (*h*) or custumals, or noted on the court rolls, even though no specific instances of usage in accordance with such custom be proved (*i*).

Immemorial.

15. A manorial custom cannot be valid unless it be from time immemorial, that is, from the time whereof the memory of man is not to the contrary (*j*). If, therefore, when *primâ facie* evidence of long continuance of a custom has been given it can be shown either that an alleged custom began at a particular time, or that it did not exist at a particular time, the alleged custom will be invalid (*k*).

Continuous.

16. The right conferred by a custom must be of uninterrupted continuance, must have been always peaceably acquiesced in (*l*),

Reasonable.

and must be reasonable (*k*). When a custom is said to be void because it is unreasonable, nothing more is meant than that the unreasonable character of the alleged custom conclusively proves that the usage alleged to be a custom, even though it may have existed from time immemorial, must have resulted from accident or indulgence, and not from any right conferred in ancient times on

(*c*) A general custom, *e.g.* the right of every copyholder to surrender in court, is part of the common law of England, and is applicable to every manor without requiring to be specially pleaded, but a special custom, as, for instance, his right to surrender out of court to the bailiff of the manor, must be specially pleaded and proved to exist in the particular manor (Co. Litt. 59 a). As to the law of customs generally, see title CUSTOM AND USAGES.

(*d*) *Peachey* v. *Somerset* (*Duke*) (1721), 1 Stra., 3rd ed., 446.

(*e*) *Re Smart*, *Smart* v. *Smart* (1881), 18 Ch. D. 165.

(*f*) Watkins on Copyholds, Vol. II., p. 45 ; *Tanistry Case* (1608), Dav. Ir. 28, 31, 32 a.

(*g*) In *Hanmer* v. *Chance* (1865), 4 De G. J. & Sm. 626, it was held that s. 1 of the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), has no application to the case of a right claimed by a copyholder in his own tenement according to the custom of the manor.

(*h*) *Portland* (*Duke*) v. *Hill* (1866), L. R. 2 Eq. 765, 778.

(*i*) *Roe* d. *Beebee* v. *Parker* (1792), 5 Term Rep. 26.

(*j*) Co. Litt. 110 b, 146 b ; Watkins on Copyholds, Vol. I., p. 14. In law the memory of man does not reach further back than the first year of the reign of Richard I. (1189). As to the evidence sufficient to prove immemorial custom, see *Hammerton* v. *Honey* (1876), 24 W. R. 603, *per* JESSEL, M.R., at p. 604 ; and p. 10, *post* ; see title CUSTOM AND USAGES.

(*k*) Watkins on Copyholds, Vol. II., p. 46.

(*l*) *Hammerton* v. *Honey*, *supra*, *per* JESSEL, M.R., at p. 603 ; Co. Litt. 114 b.

the party setting up the custom (*m*). A custom must also be certain (*n*).

Although there may be concurrent customs in the same manor (*o*), yet mutually antagonistic or inconsistent customs cannot co-exist in the same manor (*p*). One custom may, however, be subordinate to another custom or paramount right (*q*). Concurrent customs.

Mere length of time cannot cure a custom inherently unreasonable (*r*), or uncertain, or indefinite (*s*).

17. A manorial custom cannot prevail against the prerogative of the Crown (*p*), or against an Act of Parliament (*t*), nor can it be partially good; if it be not wholly good, it will be wholly bad (*u*). Rules of construction.

Where a manorial custom is opposed to a rule of the common law of England (or as it is said "against common right") such a custom must be construed very strictly and not extended beyond the usage actually proved (*v*); and where a manorial custom has become extinct, or ceases (*w*), or is exhausted (*a*), the general common law of England is applicable. A custom if set up in support of a copyhold estate will be construed favourably, but if set up in derogation of such estate will be construed strictly (*b*).

18. The burden of furnishing *primâ facie* evidence of a custom lies on him who alleges its existence, and he must show clearly that the custom when proved attaches to the particular land in question (*c*). Proof of custom.

The best and most direct *primâ facie* evidence must be given to prove a custom (*c*). An ancient custumal or customary (where such exists), and entries on the court rolls of the manor, are considered to be the best documentary evidence of manorial customs even when Custumals.

(*m*) *Salisbury* (*Marquis*) v. *Gladstone* (1861), 9 H. L. Cas. 692. A custom that copyholders may kill rabbits on the wastes of the manor is probably not an unreasonable custom (*Coote* v. *Ford* (1900), 83 L. T. 482); and a claim by freehold and copyhold tenants to take stone from the waste to be used upon their tenements may be good (*Heath* v. *Deane*, [1905] 2 Ch. 86).

(*n*) *Tyson* v. *Smith* (1838), 9 Ad. & El. 406, Ex. Ch., *per* TINDAL, C.J., at p. 421; and see *Mercer* v. *Denne*, [1904] 2 Ch. 534, *per* FARWELL, J., at p. 551; affirmed [1905] 2 Ch. 538, C. A. Thus, a claim by a lord of a manor to lay coals on the lands of copyholders to an indefinite extent is bad (*Wilkes* v. *Broadbent* (1744), 1 Wils. 63, Ex. Ch.).

(*o*) As, for instance, distinct customs in the same manor enabling estates tail in copyholds to be barred by recovery as well as by surrender (*Doe* d. *Whalhead* v. *Ossingbrooke* (1824), 2 Bing. 70; *Doe* d. *Wightwick* v. *Truby* (1774), 2 Wm. Bl. 943).

(*p*) Watkins on Copyholds, Vol. II., p. 46.

(*q*) *Bateson* v. *Green* (1793), 5 Term Rep. 411.

(*r*) Watkins on Copyholds, Vol. II., p. 46; *Wilkes* v. *Broadbent*, *supra*.

(*s*) *Wilson* v. *Willes* (1806), 7 East, 121.

(*t*) *Hammerton* v. *Honey* (1876), 24 W. R. 603, *per* JESSEL, M.R., at p. 604; and see *New Windsor Corporation* v. *Taylor*, [1899] A. C. 41, *per* Lord DAVEY, at p. 49.

(*u*) Watkins on Copyholds, Vol. II., p. 47; *Wilkes* v. *Broadbent*, *supra*.

(*v*) *Muggleton* v. *Barnett* (1857), 2 H. & N. 653, Ex. Ch.; *Re Smart*, *Smart* v. *Smart* (1881), 18 Ch. D. 165.

(*w*) Watkins on Copyholds, Vol. II., p. 51; *Denn* v. *Spray* (1786), 1 Term Rep. 466, *per* ASHHURST, J., at p. 474.

(*a*) *Re Smart*, *Smart* v. *Smart*, *supra*.

(*b*) *Baspool* v. *Long* (1602), Cro. Eliz. 879, *per* POPHAM, J.

(*c*) Watkins on Copyholds, Vol. II., p. 48; 1 Bl. Com. 76; *Roberts* v. *Young* (1618), Hob. 286.

SECT. 1. Nature and Origin of Manors.

unsupported by evidence of actual usage (*d*). But such custumals must be of considerable antiquity, and must come from proper custody (*e*). An ancient customary compiled within the period of legal memory is conclusive evidence against the existence of any custom alleged but not shown by such customary (*f*). In some cases the customs of manors are declared in Acts of Parliament (*g*).

Leases etc.

Statements in old leases may be good evidence to prove a manorial custom without actual enjoyment under such leases being shown (*h*), and entries in receivers' accounts covering a period of three hundred years have been accepted as evidence of customary payments notwithstanding apparent variations in such accounts (*i*).

Reputation.

Manorial customs may, moreover, be proved by parol evidence, as by evidence of reputation or by evidence of specific instances of usage in accordance with the custom alleged (*k*). A regular usage for twenty years, not explained or contradicted, is evidence upon which a jury may find an immemorial custom in accordance with such usage (*l*); and even a single and uncontroverted instance of an alleged custom having been acted on has been held to be *primâ facie* evidence to prove the custom (*m*).

Evidence of a custom obtaining in one manor may be admissible to explain (*n*), but not to prove (*o*), a similar custom in another or adjoining manor. An apparent exception to this rule in connection with tenant-right estates in the north of England is due to the fact that originally all these estates were held of one large manor (*p*).

Destruction of custom.

19. As manorial customs attach to the tenure as distinguished from the mere locality of the lands, it follows that upon the destruction of the tenure the customs are also destroyed (*q*).

SUB-SECT. 5.—*Manorial Courts.*

The court baron.

20. Jurisdiction over the manorial territory was an essential constituent of a manor (*r*), and it followed that there must be

(*d*) Watkins on Copyholds, Vol. II., p. 49; *Roe* d. *Beebee* v. *Parker* (1792), 5 Term Rep. 26.

(*e*) Watkins on Copyholds, Vol. II., p. 41; *Denn* v. *Spray* (1786), 1 Term Rep. 466; and see *Chapman* v. *Cowlan* (1810), 13 East, 10. As to the admissibility of a copy of a decree of the Court of Chancery establishing customs, see *Price* v. *Woodhouse* (1849), 3 Exch. 616.

(*f*) *Portland* (*Duke*) v. *Hill* (1866), L. R. 2 Eq. 765; for if the custom had existed, it would have been recorded (*Anglesey* (*Marquis*) v. *Hatherton* (*Lord*) (1842), 10 M. & W. 218, *per* Lord ABINGER, at p. 241).

(*g*) See *Doe* d. *Riddell* v. *Gwinnell* (1841), 1 Q. B. 682.

(*h*) *Clarkson* v. *Woodhouse* (1782), 3 Doug. (K. B.) 189.

(*i*) *Beaufort* (*Duke*) v. *Smith* (1849), 4 Exch. 450.

(*k*) Watkins on Copyholds, Vol. II., p. 49. But see *Doe* v. *Sisson* (1810), 12 East, 62.

(*l*) *R.* v. *Joliffe* (1823), 2 B. & C. 54.

(*m*) *Roe* d. *Bennett* v. *Jeffery* (1813), 2 M. & S. 92. See also *Phillips* v. *Ball* (1859), 29 L. J. (C. P.) 7; *Doe* d. *Mason* v. *Mason* (1770), 3 Wils. 63.

(*n*) *Rowe* v. *Brenton* (1828), 8 B. & C. 737.

(*o*) *Ely* (*Dean*) v. *Warren* (1741), 2 Atk. 189; see also *Anglesey* (*Marquis*) v. *Hatherton* (*Lord*), *supra*; *Everest* v. *Glyn* (1815), 6 Taunt. 425.

(*p*) *Somerset* (*Duke*) v. *France* (1727), 1 Stra. 661.

(*q*) Watkins on Copyholds, Vol. II., p. 55; see also Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 21 (1) (c).

(*r*) Watkins on Copyholds, Vol. I., p. 8; Coke, The Compleat Copy-holder (1673), s. 31, p. 56; and p. 3, *ante*.

courts attached to the manor in which the jurisdiction could be exercised. Originally there was only one court, namely the court baron, attended by the free tenants; but it became usual for the villeins and free tenants, as holders of copyhold lands of the manor, to make applications to the lord or the steward on the occasions when the court baron was held, and in relation to such applications the court is properly called the copyhold or customary court, but is usually, though incorrectly, styled the court baron (*s*). Neither the court baron nor the customary court is a court of record (*t*).

The homage.

In the court baron the free tenants are both suitors and judges, and together constitute "the homage" (*u*). The right to hold a court baron is not lost by mere non-user for a considerable number of years (*w*), but there must be at least two suitors to constitute a court baron (*a*); and if for lack of suitors a court cannot be held, the court baron is gone for ever, and the manor with it (*b*). The manor, however, may continue as a reputed manor. A court baron proper cannot be held without the steward, who is a judicial officer and a constituent and essential part of it (*c*).

The only jurisdiction now (*d*) remaining to the court baron of an honour or manor is that of recovering debts and demands in those manors (few, if any) where the right to such jurisdiction has not been surrendered (*e*).

The customary or copyhold court.

21. A manor may exist without there being a copyhold or customary court (*f*); and, for purely ministerial purposes it would seem, a customary court may be held although there be only one suitor present or even no copyhold tenants of the manor (*g*).

By a majority the homage may bind all persons entitled to be members of the homage (*h*). The free tenants of the manor are not of the homage of the copyhold or customary courts, and cannot be bound thereby (*i*).

(*s*) See Co. Litt. 58 a.

(*t*) *Ibid.*, 117 b.

(*u*) Watkins on Copyholds, Vol. I., p. 8; *Arlett* v. *Ellis* (1827), 7 B. & C. 346.

(*w*) *R.* v. *Havering-atte-Bower* (*Steward of the Manor*) (1822), 5 B. & Ald. 691.

(*a*) *Bradshaw* v. *Lawson* (1791), 4 Term Rep. 443; see p. 21, *post*.

(*b*) Watkins on Copyholds, Vol. I., p. 8; see *Delacherois* v. *Delacherois* (1864), 11 H. L. Cas. 62, *per* WILLES, J., at p. 79; and p. 21, *post*.

(*c*) *Holroyd* v. *Breare* (1819), 2 B. & Ald. 473, 477. As to the steward, see pp. 59 *et seq.*, *post*.

(*d*) Originally the manorial jurisdiction was criminal as well as civil (Watkins on Copyholds, Vol. I., p. 7; Vol. II., p. 1; see *Hellawell* v. *Eastwood* (1850), 2 Exch. 295). The criminal jurisdiction has long since disappeared (Watkins on Copyholds, Vol. II., p. 2), and the civil jurisdiction has gradually become less until to-day it is practically non-existent; see Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 3; County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 28; and title COURTS.

(*e*) Pursuant to s. 14 of the Small Debts Act, 1846 (9 & 10 Vict. c. 95), repealed and re-enacted by County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 6.

(*f*) *Delacherois* v. *Delacherois*, *supra*, at p. 83.

(*g*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), ss. 82, 83. For an instance of a manor with no copyhold tenants, see *Foljambe* v. *Smith's Tadcaster Brewery Co.* (1904), 73 L. J. (CH.) 722.

(*h*) At least as to such matters as the inclosure of the waste for building purposes (*Wentworth* (*Lady*) v. *Clay* (1676), Cas. *temp.* Finch, 263, cited in *Ramsey* v. *Cruddas*, [1893] 1 Q. B. 228, 235).

(*i*) Watkins on Copyholds, Vol. I., p. 45.

SECT. 1. Nature and Origin of Manors.

As a rule the lord's steward presides over the customary court (*j*), and apparently an appeal lies from him to the lord by petition (*k*).

Court leet.

22. A court leet, though found as an adjunct, is not an incident, to a manor. It is a court of record having jurisdiction over a specified area quite independently of manorial territory, jurisdiction, or rights, except in so far as it may be a franchise conferred by the Crown upon a person as lord of a manor (*l*). This franchise may be lost by disuse (*m*).

The right to hold a court.

23. Every person entitled to a freehold manor may hold a court baron proper as incidental thereto (*n*); and if there be copyholds held of the manor, he must hold a copyhold or customary court for the copyholders (*o*). But the holder of a copyhold manor cannot hold a court baron proper, for there can be no free tenants of a manor held by copy of court roll of a superior manor (*p*).

Where the lord of a manor comprising copyholds has granted the inheritance of all the copyholds to another, the grantee may hold a customary court to make admittances and grants of the copyhold or tenements (*q*).

Lessees.

Inasmuch as the right to hold a court is inseparable from a manor, a lessee of a manor has the right to hold a court; and where the lease contains a reservation to the lessor of the right, he should hold the court for the manor in the name of the lessee (*r*). It seems that the right to hold a court baron cannot be excepted out of a demise of a manor (*s*).

Lords *de facto*.

A tenant at will of a manor, as, for instance, a mortgagor in possession (*t*), being lord *pro tempore*, may hold a court, and a lord *de facto* but not *de jure* may hold a court at least for the transaction of ministerial business (*a*).

Married women.

A man seised of a manor in right of his wife may hold a court, but it must be held in the joint names of himself and his wife (*b*).

A widow to whom copyholds have been assigned for her dower or freebench may hold a customary court for the tenants of those copyholds (*c*).

Several lords.

Where a manor has been divided by operation of law and is held by several parties, each party may hold a separate court in respect of his portion (*d*).

(*j*) Watkins on Copyholds, Vol. II., p. 17.

(*k*) *Court Baron Case* (1564), Moore (K. B.), 68, cited in Scriven on Copyholds, p. 425.

(*l*) *Delacherois* v. *Delacherois* (1864), 11 H. L. Cas. 62, *per* WILLES, J., at p. 79. As to courts leet, see further *Platt* v. *Jessett* (1900), 17 T. L. R. 105; and title COURTS.

(*m*) *Darell* v. *Bridge* (1749), 1 Wm. Bl. 46.

(*n*) Watkins on Copyholds, Vol. II., p. 3.

(*o*) *Ibid.*, p. 4.

(*p*) *R.* v. *Staverton* (1610), Yelv. 190; Co. Litt. 58 b (r); Watkins on Copyholds, Vol. II., p. 3 As to copyhold manors, see p. 3, *ante*.

(*q*) *Melwich* v. *Luter* (1588), 4 Co. Rep. 26 a; and see p. 4, *ante*.

(*r*) Watkins on Copyholds, Vol. II., p. 5; *Wheeler and Twogood's Case* (1588), 1 Leon. 118.

(*s*) *Anon.* (*circa* 1560), Cary, 18.

(*t*) Scriven on Copyholds (1846), 4th ed., p. 91, n. (e); *ibid.* (1867), 5th ed., p. 73, n. (e); Fisher on Mortgages, 5th ed., p. 421; Coote on Mortgages, 7th ed., p. 178.

(*a*) Watkins on Copyholds, Vol. II., p. 14; and see p. 82, *post*.

(*b*) Watkins on Copyholds, Vol. II., p. 5; Cases with Opinions (1791), p. 216.

(*c*) Watkins on Copyholds, Vol. II., p. 5; *Bragg's Case* (1587), Godb. 135; *Gay* v. *Kay* (1599), Cro. Eliz. 661.

(*d*) See *Cattley* v. *Arnold* (1858), 4 K. & J. 595; *Melwich* v. *Luter*, *supra*. As to

The lord of an honour can only hold one court for all the manors comprised in the honour (*e*).

24. Courts may be held at night (*f*), and should be held as often as required (*g*). By custom a court may be held on certain fixed days (*h*), in which case neglect on the part of a suitor to attend court may render him liable to a fine, but not to a forfeiture of his holding (*h*); but if there be no fixed day for holding a court, the steward must give to each tenant personally a notice as to when and where the court will be held, and command the tenant to appear and do suit (*i*). A general notice will be bad (*i*). Wilful disobedience to a personal notice renders the tenant liable to forfeit his holding (*j*).

Time for holding courts.

Notice.

Where a tenant cannot attend court for some good reason, he may essoign, that is, justify by attorney his non-attendance (*k*).

25. A court baron proper must be held within the manor, but anywhere within the manor unless a definite place be fixed by custom (*l*). A customary court may be held anywhere within the manor (*l*), but not without the manor except by virtue of a special custom (*m*).

Where held.

26. Every freehold tenant (*n*) and every copyhold tenant (*o*) of a manor is bound to attend the court baron and the customary court respectively for the purpose of doing suit of court and other duties devolving upon them as members of the homage or jury of the court. Each class of tenant can only attend his own court, for a copyholder cannot attend the court baron proper (*p*). This obligation on the tenant to attend the lord's court is called suit of court (*q*).

Suit of court.

The King cannot do suit of court, for it is beneath his dignity, so that if he own copyholds he must hold by a trustee (*r*).

Under the law previous to January 1st, 1883, a married woman could not do suit of court except by her husband (*s*). It is not clear

division of manors by operation of law and act of parties respectively, see p. 20, *post*.

(*e*) Scriven on Copyholds, p. 4.

(*f*) Watkins on Copyholds, Vol. II., p. 14; *Belfield* v. *Adams* (1616), 3 Bulst. 80.

(*g*) Watkins on Copyholds, Vol. II., p. 11.

(*h*) *Ibid.*, p. 24.

(*i*) *Ibid.*, pp. 23, 135; *Taverner* v. *Cromwell* (*Lord*) (1594), Cro. Eliz. 353, where a four days' notice was held sufficient, but fifteen days' notice is usual (Kitchin on Courts Leet, 2nd ed. (1653), p. 11). For forms of notice etc., see Encyclopædia of Forms, Vol. V., pp. 188 *et seq.*

(*j*) Watkins on Copyholds, Vol. II., p. 135; *Hewet* v. *Norberow* (1611), 1 Bulst. 52.

(*k*) Watkins on Copyholds, Vol. II., p. 25; *Braunche's* (*Sir John*) *Case* (1587), 1 Leon. 104.

(*l*) Watkins on Copyholds, Vol. II., p. 6; Co. Litt. 50 a.

(*m*) *Doe* d. *Leach* v. *Whitaker* (1834), 5 B. & Ad. 409; also reported *sub nom.* *Doe* d. *Roberts* v. *Whitaker*, 3 Nev. & M. (K. B.) 225.

(*n*) Scriven on Copyholds, p. 261.

(*o*) *Ibid.*, at p. 238.

(*p*) Watkins on Copyholds, Vol. II., p. 3; see p. 11, *ante*.

(*q*) *Ibid.*, Vol. I., p. 8.

(*r*) *Ibid.*, Vol. II., p. 135; *Braunche's* (*Sir John*) *Case*, *supra*.

(*s*) Watkins on Copyholds, Vol. II., p. 134; Vol. I., p. 335; *Hedd* v. *Chalener* (1589), Cro. Eliz. 149; and see Co. Litt. 66 b.

SECT. 1. Nature and Origin of Manors.

how far this rule has been abrogated by the Married Women's Property Act, 1882 (*t*).

An unmarried woman or a widow may do suit of court in the customary or copyhold court (*u*), and a widow must do suit for her freebench in such court (*a*). A widower must do suit for his curtesy (*a*).

An infant over fourteen years of age may do suit of court, but not, even by his guardian, if under that age (*u*).

An heir cannot do suit before admittance express or implied (*a*). Each tenant in common of copyhold land must do suit (*b*), but one of several joint tenants or co-parceners can do suit for all (*c*). In the case of co-parceners the eldest is liable to do suit (*d*).

A freehold tenant may (*e*), but a copyhold tenant may not (*f*), do suit of court by attorney. Hence a corporation aggregate cannot do suit for, and so cannot hold, land by copy of court roll (*f*).

Remedies.

27. Specific performance of suit of court will not be granted (*g*). But if a tenant neglect to perform his suit of court, he is liable to be amerced (*h*), that is, punished in some way, usually, but not necessarily, by fine; but if by fine, such fine must be affeered—that is, assessed (*i*)—by at least two other tenants holding by similar tenure (*k*). Such a fine may be recovered by distress (*l*), but the distress cannot be sold (*m*).

SUB-SECT. 6.—*The Court Rolls.*

Proceedings in manorial courts entered on court rolls.

28. The proceedings of both the court baron and the customary court are recorded upon the court rolls of the manor (*n*).

Where a grant of copyhold land has been made to a tenant he may compel an entry of the grant to be made upon the court rolls of the manor; and although it is usual and desirable that a copy of such entry should be given to the tenant, it is not essential, as the entry itself is sufficient (*o*); but the uses upon which copyholds are held need not be entered on the court rolls, but may be indorsed by the steward on the surrender (*p*).

(*t*) 45 & 46 Vict. c. 75, s. 1.

(*u*) Watkins on Copyholds, Vol. II., p. 134; Vol. I., p. 335; *Hedd* v. *Chalener* (1589), Cro. Eliz. 149; and see Co. Litt. 66 b.

(*a*) Watkins on Copyholds, Vol. II., p. 134.

(*b*) *Bruerton's Case* (1594), 6 Co. Rep. 1 a; Co. Litt. 67 b; Watkins on Copyholds, Vol. II., p. 136.

(*c*) Co. Litt. 67 a; Watkins on Copyholds, Vol. II., p. 136.

(*d*) Co. Litt. 67 b; Watkins on Copyholds, Vol. II., p. 136.

(*e*) Statute of Merton, 1235 (20 Hen. 3, c. 10).

(*f*) Watkins on Copyholds, Vol. II., p. 135.; *Braunche's* (*Sir John*) *Case* (1587), 1 Leon. 104; and see title CORPORATIONS, p. 372, *post*.

(*g*) *Thornhagh* v. *Hartshorn* (1727), Bunb. 237.

(*h*) As to the meaning of this word, see *Re Nottingham Corporation*, [1897] 2 Q. B. 502, *per* POLLOCK, B., at p. 508.

(*i*) Murray's New English Dictionary, Vol. I., p. 155.

(*k*) Watkins on Copyholds, Vol. II., p. 135.

(*l*) Co. Litt. 151 a; Watkins on Copyholds, Vol. II., p. 135.

(*m*) *Hewet* v. *Norberow* (1611), 1 Bulst. 52; *Gomersall* v. *Medgate* (1611), Yelv. 194; and compare 3 Bl. Com. 12.

(*n*) Watkins on Copyholds, Vol. II., p. 35.

(*o*) *Ibid.*, p. 36. But as to the requirements of the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 67, see p. 63, *post*.

(*p*) *Car* v. *Ellison* (1744), 3 Atk. 73.

Every surrender and deed of surrender which a lord is compellable to accept or accepts, and every will a copy of which is delivered to him either at a court at which there is not a homage assembled or out of court, and every grant or admittance made in pursuance of the Copyhold Act, 1894, must be entered on the court rolls, and such entry will be as valid for all purposes as an entry made in pursuance of a presentment by the homage, and will entitle the steward to the same fees and charges (*a*).

Surrenders and admittances.

Disentailing assurances (*b*) and awards of enfranchisement (*c*) must also be entered on the court rolls, or they will be void.

Disentailing assurances.

Where real estate of the nature of customary freehold or tenant right or copyhold is disposed of by will, the will, or so much thereof as is material, should be entered on the court rolls of the manor (*d*).

Wills.

29. An entry upon the court rolls must be made by the steward, and the homage present must attach their names to the entry according to their seniority of admittance, the foreman first (*e*).

Steward must prepare stamped copy of entry.

The steward of every manor must, within four months from the day on which any surrender or grant is made in court, make out a duly stamped copy of court roll of such surrender or grant, and have the same ready for delivery to the person entitled thereto (*f*). The person entitled is not, it would seem, bound to take the copy (*g*).

30. Where an entry on the court rolls is wrong in fact, it may be rectified, and a latent misdescription of the surrenderee in a surrender will be rectified (*h*), and in a proper case the word "or" in a surrender will be construed as meaning "and" (*i*). But the High Court will not rectify an entry on the court rolls unless the lord be a party to the suit or consent to such order as the court shall think fit to make (*k*).

Court rolls may be corrected.

31. The lord of the manor has the right to the custody of the court rolls, but his right is qualified by that of the steward (*l*), who, having responsible duties to perform, is entitled to possession of the rolls in order to enable him to discharge those duties, and the court will not deprive him of such possession unless the steward be guilty of some misconduct (*m*), or some other good reason be shown

The lord's right to custody qualified by that of the steward.

(*a*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 85.
(*b*) See p. 72, *post*.
(*c*) See p. 126, *post*.
(*d*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 5.
(*e*) Watkins on Copyholds, Vol. II., p. 385.
(*f*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 67. The penalty for disobedience to this provision is a £50 fine and the duty payable in respect of the copy of court roll.
(*g*) *Doe* d. *Bennington* v. *Hall* (1812), 16 East, 208, 209; and see p. 14, note (*o*), *ante*.
(*h*) Watkins on Copyholds, Vol. II., p. 36; *Garner* v. *Garner* (1862) 7 L. T. 182; S. C. (1860) 3 L. T. 396.
(*i*) *Wright* v. *Kemp* (1789), 3 Term Rep. 470.
(*k*) *Elston* v. *Wood* (1833), 2 My. & K. 678.
(*l*) *Re Jennings*, [1903] 1 Ch. 906.
(*m*) *Rawes* v. *Rawes* (1836), 7 Sim. 624.

SECT. 1. Nature and Origin of Manors.

for so doing, and not even then without seeing that another steward is appointed to perform his functions (*n*). When all the lands held of a manor have been enfranchised, the lord, or, with the consent of the lord, any person having custody of the court rolls and records of the manor, may hand over all or any of the court rolls and records to the Board of Agriculture and Fisheries, or to the Master of the Rolls (*o*).

Custody after enfranchisement.

Right of inspection other than copyhold.

32. Where a dispute has arisen between lords of neighbouring manors, the court will give either party discovery and inspection of the court rolls of the other manor (*p*). A freehold tenant of a manor will not be allowed to inspect the court rolls unless there is some action pending involving his rights (*q*).

Right of copyhold tenants to inspect.

A person having a *primâ facie* title to a copyhold tenement of a manor is entitled to inspect the court rolls and take copies thereof at any time, whether there be an action pending or not (*a*), and to enforce his right he may have a mandamus against either the lord (*b*) or the steward (*c*). It is not necessary for other persons similarly interested to join in the application for inspection (*d*).

Inspection restricted.

Inspection may be ordered in an action between two tenants (*e*), or in an action against the lord (*f*), but inspection must be confined to rights of the applicant alone, as a general inspection will not be allowed (*g*). The agent of a person holding a power of attorney to inspect court rolls has no right to inspect them (*h*).

Where an action is pending between the lord and a tenant of a manor as to an alleged manorial custom (*i*), the tenant is entitled as of right to inspect the court rolls, for, as between the parties, they are public documents, and belong to the tenant (*j*), and he cannot be required to pay any fee to the steward in respect of the production of the court rolls by him (*k*). But where the issue between parties to an action is as to the existence of a manor of which the defendant alleges that the plaintiff is tenant, the latter will not be allowed to inspect the court rolls of the alleged manor, in the possession of the defendant, which he has sworn relate only to his own case (*l*).

(*n*) *Windham* v. *Giubilei* (1871), 24 L. T. 653.
(*o*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 64.
(*p*) Watkins on Copyholds, Vol. II., p. 37 ; *Anon.* (1755), 2 Ves. Sen. 620 ; and see *Minet* v. *Morgan* (1871), L. R. 11 Eq. 284.
(*q*) *R.* v. *Allgood* (1798), 7 Term Rep. 746 ; *Ex parte Best* (1833), 3 Dowl. 38 ; and see *Smith* v. *Davies* (1745), 1 Wils. 104.
(*a*) *R.* v. *Lucas* (1808), 10 East, 235 ; *R.* v. *Tower* (1815), 4 M. & S. 162 ; *Ex parte Barnes* (1842), 2 Dowl. (N. S.) 20.
(*b*) *R.* v. *Shelley* (1789), 3 Term Rep. 141.
(*c*) *Rogers* v. *Jones* (1825), 5 Dow. & Ry. (K. B.) 484.
(*d*) *Ex parte Hutt* (1839), 7 Dowl. 690.
(*e*) *Addington* v. *Clode* (1775), 2 Wm. Bl. 1030.
(*f*) *Folkard* v. *Hemet* (1776), 2 Wm. Bl. 1061.
(*g*) *R.* v. *Tower* (1815), 4 M. & S. 162 ; see also R. S. C., Ord. 31, r. 19.
(*h*) *Ex parte Hutt, supra.*
(*i*) Inspection will not be granted to support an indictment against a lord for failure to repair a road within a manor (*R.* v. *Cadogan (Lord)* (1822), 5 B. & Ald. 902.
(*j*) *Warrick* v. *Queen's College, Oxford* (1867), L. R. 3 Eq. 683 ; and see *Re Jennings*, [1903] 1 Ch. 906.
(*k*) *Hoare* v. *Wilson* (1867), L. R. 4 Eq. 1.
(*l*) *Owen* v. *Wynn* (1878), 9 Ch. D. 29, C. A.

Purchases.

33. The lord of a manor selling as tenant for life, under a power, a portion of the manorial lands, must acknowledge the right of the purchaser to production of the court rolls (*m*). Where copyholds are taken and enfranchised under the Lands Clauses Consolidation Act, 1845 (*n*), the purchaser is not entitled to more than an acknowledgment by the lord of the right of the purchaser to production of the documents of title to the manor and of the court rolls, so far as the same relate to the lands so taken, and to delivery of copies thereof, and an undertaking by the lord alone for safe custody thereof, but it is doubtful whether the purchaser is entitled even to this (*o*).

The court rolls and records relating to lands of the manor enfranchised under the Copyhold Act, 1894 (*p*), may be inspected, and copies thereof taken, by any person interested in any of the enfranchised land, whether all the lands of the manor have been enfranchised or not, and whether the court rolls and records are in the custody of the lord or of some other person with his consent, or in the custody of the Board of Agriculture and Fisheries or of the Master of the Rolls, but subject to payment of such a fee as the Board or the Master of the Rolls shall think reasonable (*q*).

Court rolls *primâ facie* evidence only.

34. Court rolls of a manor are not documents of record, and do not operate by way of estoppel (*r*). They are *primâ facie* evidence (*s*), but, although not requiring to be stamped, are not admissible as evidence of a grant or surrender unless the memorandum or copy of the surrender or grant is duly stamped, of which fact the certificate of the steward of the manor in the margin of the entry of such grant or surrender on the court rolls is sufficient evidence (*t*).

Persons against whom evidence.

35. Court rolls of a manor, taken by themselves, are evidence only against the tenants and the lord of the manor. They are not of necessity binding on third persons (*u*), and are not constructive notice of prior incumbrances appearing thereon to a purchaser of copyholds held of the manor (*x*).

Proof.

36. Court rolls need not be signed by the steward of the manor, and may be proved by the deputy steward even though appointed by word of mouth only (*a*).

Copies of the court rolls under the hand of the steward are good secondary evidence of the copyhold estate (*b*), so is a sworn copy (*c*).

(*m*) *Poulett* (*Earl*) v. *Hood* (1868), L. R. 5 Eq. 115.
(*n*) 8 & 9 Vict. c. 18 ; see p. 129, *post*.
(*o*) *Re Agg-Gardner* (1884), 25 Ch. D. 600.
(*p*) 57 & 58 Vict. c. 46 ; see pp. 114 *et seq. post*.
(*q*) *Ibid.*, ss. 62, 64 ; and see p. 16, *ante*.
(*r*) *Burgess* v. *Foster* (1593), 1 Leon. 289 ; and see *Doe* d. *Priestley* v. *Calloway* (1827), 6 B. & C. 484.
(*s*) Watkins on Copyholds, Vol. II., p. 38 ; and see *Roe* d. *Beebee* v. *Parker* (1792), 5 Term Rep. 26 ; *Heath* v. *Deane*, [1905] 2 Ch. 86, *per* JOYCE, J., at p. 91.
(*t*) Stamp Act, 1891 (54 & 55 Vict. c. 35), s. 65 ; see *Doe* d. *Cawthorn* v. *Mee* (1833), 4 B. & Ad. 617 ; and p. 63, *post*.
(*u*) *A.-G.* v. *Hotham* (*Lord*) (1823), Turn. & R. 209.
(*x*) *Bugden* v. *Bignold* (1843), 2 Y. & C. Ch. Cas. 377 ; and see *Cole* v. *Coles* (1848), 6 Hare, 517 (bankruptcy).
(*a*) *Bridger* v. *Huett* (1860), 2 F. & F. 35.
(*b*) Watkins on Copyholds, Vol. II., p. 38 ; *Snow* v. *Cutler* (1663), 1 Keb. 567.
(*c*) *Breeze* v. *Hawker* (1844), 14 Sim. 350.

SECT. 1. Nature and Origin of Manors.

But where copies are given in evidence they must be supported by evidence of enjoyment of the estate shown by the copy (*d*).

As the steward is not a public official, proof may be required as to the authenticity of the document purporting to be given under his hand; *e.g.*, proof of his handwriting may be required (*e*). But such documents, if thirty years old, will be accepted without such proof (*e*).

SECT. 2.—*Evidence as to the Existence and Extent of a Manor.*

Evidence as to existence of a manor.

37. The best evidence of the existence and extent of a manor is the original grant of the manor; but, failing this, it is not necessary, in order to prove the existence of a manor, to produce the court rolls or any documentary proofs of the holding of courts (*f*). Parol evidence of the holding of courts (*f*), the appointment of gamekeepers (*f*), surrenders and corresponding admittances purporting to be copies of the rolls of the manor (*g*), or reputation alone (*h*) are admissible to prove the existence of a manor. In a proper case the High Court will presume a lost grant to support the title to a manor (*i*).

Boundaries.

Where an ancient grant of a manor is indefinite as to its boundaries, evidence of acts of ownership over a long series of years by a person as lord under the grant is admissible to prove the extent of the manor (*k*). Perambulations of the boundaries of a manor are evidence of acts of ownership on the part of the lord (*l*).

A survey made by a commission of the Crown at a time when the Crown was seised of a manor (*m*), a survey over two hundred years old apparently made by the direction of the Crown when the manor belonged to the Duchy of Cornwall (*n*), a presentment in a manor court (*o*), an ancient manor book (*o*), or even reputation alone (*a*), are admissible as evidence of the boundaries or identity of the land within a manor, but the documentary evidence must be proved (*o*) and come from proper custody (*n*). A verdict of a jury in an action between other parties may be evidence as to boundaries (*b*), but an arbitrator's award is not evidence (*c*).

(*d*) Watkins on Copyholds, Vol. II., p. 39; *Pilkington* v. *Bagshaw* (1655), Sty. 450.

(*e*) *Somerset* (*Duke*) v. *France* (1725), Fortes. Rep. 41, 43, n.

(*f*) *Doe* d. *Beck* v. *Heakin* (1837), 6 Ad. & El. 495.

(*g*) *Standen* v. *Christmas* (1847), 10 Q. B. 135.

(*h*) *Steel* v. *Prickett* (1819), 2 Stark. 463; and see *Brisco* v. *Lomax* (1838), 8 Ad. & El. 198.

(*i*) *Merttens* v. *Hill*, [1901] 1 Ch. 842.

(*k*) *Re Walton-cum-Trimley* (*Manor*), *Ex parte Tomline* (1873), 28 L. T. 12; *Beaufort* (*Duke*) v. *Swansea Corporation* (1849), 3 Exch. 413; and as to evidence of boundaries generally, see title BOUNDARIES AND FENCES, Vol. III., pp. 138 *et seq.*

(*l*) *Woolway* v. *Rowe* (1834), 1 Ad. & El. 114.

(*m*) *Dimes* v. *Arden* (1836), 6 Nev. & M. (K. B.) 494.

(*n*) *Smith* v. *Brownlow* (*Earl*) (1870), L. R. 9 Eq. 241.

(*o*) *Evans* v. *Rees* (1839), 10 Ad. & El. 151.

(*a*) *Doe* d. *Jones* v. *Richards* (1798), Peake, Add. Cas. 180; *Doe* d. *Molesworth* v. *Sleeman* (1846), 9 Q. B. 298; *Talbot* v. *Lewis* (1834), 5 Tyr. 1; *Doe* d. *Padwick* v. *Skinner* (1848), 3 Exch. 84; but see *Beaufort* (*Duke*) v. *Smith* (1849), 4 Exch. 450.

(*b*) *Brisco* v. *Lomax*, *supra*.

(*c*) *Evans* v. *Rees*, *supra*.

SECT. 3.—*Transmission and Division of Manors.*

SECT. 3. Transmission and Division of Manors.

38. A freehold manor will devolve and may be transmitted in the same manner and by the same means, and subject to the same rules of law and equity, as an ordinary freehold (*d*).

What is comprised in the conveyance of a manor.

Unless a contrary intention is expressed therein, a conveyance of a manor generally will include the manor-house (or mansion), the demesne lands, the freehold lands held of the manor, the copyhold lands held of the manor, the waste lands and the soil and minerals thereunder (*e*), the services rendered by the tenants, and generally all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices and the ground or soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all belonging thereto, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief rents, quit-rents, rent-charges, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same or reputed or known as part, parcel, or member thereof: but this will not convey more than the party conveying has to convey (*f*).

A conveyance made after the 31st of December, 1881, of a reputed manor, in the absence of expressed contrary intention, has the same effect as the conveyance of a manor (*g*).

Except in the case of a Crown manor sold by the Crown to a subject (*h*), an advowson appendant to a manor will pass with the manor under a grant of the manor with the appurtenances (*i*), and now apparently even if the appurtenances are not expressly granted (*k*).

The lord of a manor cannot by deed convey away an estate

(*d*) See titles DESCENT AND DISTRIBUTION; EXECUTORS AND ADMINISTRATORS; REAL PROPERTY AND CHATTELS REAL; WILLS. As regards sales by a tenant for life of a settled manor, see the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 3 (2), (3), (4). As to whether, on a conveyance of particular real estate, general words will pass a manor, see *Rooke* v. *Kensington* (*Lord*) (1856), 2 K. & J. 753.

(*e*) See *Cator* v. *Croydon Canal Co.* (1841), 4 Y. & C. (EX.) 405.

(*f*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 6 (3), (4), (5). As to copyhold allotments purchased by trustees of a manor, see *Hicks* v. *Sallitt* (1853), 3 De G. M. & G. 782, 793, C. A.

(*g*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 2 (iv.). A conveyance of a reputed manor prior to the 31st of December, 1881, did not pass the freehold interest of the grantor in the waste or any specific tenement possessed by the grantor (*Doe* d. *Clayton* v. *Williams* (1843), 11 M. & W. 803), but only those franchises and appurtenances, if any, which belonged thereto (*Soane* v. *Ireland* (1808), 10 East, 259).

(*h*) Stat. De Prerogativa Regis (17 Edw. 2, c. 15); *Whistler's Case* (1612), 10 Co. Rep. 63 a; *A.-G.* v. *Sitwell* (1835), 1 Y. & C. (EX.) 559; *per* ALDERSON, B., at p. 583; and see title CONSTITUTIONAL LAW, Vol. VI., p. 479.

(*i*) *A.-G.* v. *Ewelme Hospital* (1853), 17 Beav. 366, *per* ROMILLY, M.R., at p. 386; see also *Rooper* v. *Harrison* (1855), 2 K. & J. 86.

(*k*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 6 (3). As to such a grant in cases where the Act does not apply, see *Higgins* v. *Grant* (1582), Cro. Eliz. 18.

SECT. 3. Transmission and Division of Manors.

parcel of a manor reserving the old services formerly due in respect of such estate, for by the conveyance the estate ceases to be held of the manor and becomes held of the superior lord (*l*).

39. A devise of a manor carries the demesne lands (*m*).

Division of manor.

40. It is probable that a manor may be partitioned or divided by operation of law (*n*), but not by act of party, into several manors, with several courts baron for each (*o*).

SECT. 4.—*Destruction of Manors.*

(1) Merger of mesne in paramount manor.

41. Where a manor is held of another manor the former, called a mesne manor, will be destroyed if it merge or be forfeited or escheat to the latter, called the paramount manor (*p*) : but rights which are adjuncts as distinguished from incidents to a manor, such as rights of appointment to an office or visitation to an hospital, will not become extinguished or destroyed by reason of the destruction by escheat or merger of the manor to which they are attached (*q*).

Distinct manors will not merge.

The fact that two or more entirely distinct manors, even though contiguous, are vested by act of party for similar estates in the same lord will not effect a destruction at all of either manor, but each will remain separate and distinct (*r*).

(2) Severance of services from land.

42. Whenever the services due to the lord of a manor become completely separated by act of party from the manorial lands beyond possibility of reuniting, the manor is at once destroyed, though it may continue as a manor in gross or a reputed manor (*s*) for certain purposes, for instance, to support the right of the lord to take wreck or appoint a sexton of the parish wherein the manor is situated (*a*) or to support the lord's title to the wastes (*b*).

(3) Acquisition of lands by the lord.

43. Where manorial lands revert to the lord of the manor by operation of law, as by escheat or descent, they become reunited to the manor and pass with it; but where such lands are acquired by the lord by act of party, as, for instance, by purchase by the lord, they do not reunite to the manor, but pass as ordinary freeholds independently of the manor (*c*).

(*l*) *Bradshaw* v. *Lawson* (1791), 4 Term Rep. 443.

(*m*) *Hicks* v. *Sallitt* (1853), 3 De G. M. & G. 782, C. A.

(*n*) See *Hanbury* v. *Hussey* (1851), 14 Beav. 152 ; *Sparrow* v. *Fiend* (1761), 1 Dick. 348 ; *Cattley* v. *Arnold* (1858), 4 K. & J. 595 ; *Heath* v. *Deane*, [1905] 2 Ch. 86, *per* JOYCE, J., at p. 91.

(*o*) The point is doubtful, but this seems to be the better opinion. The authorities in favour of the validity of division are Y. B. 43 Edw. 3, 11 ; *Harris* v. *Nichols* (1583), Cro. Eliz. 19 ; *Morris* v. *Smith* (1583), Cro. Eliz. 38 ; and see *Denny's* (*Sir Anthony*) *Case* (1590), 2 Leon. 190. The authorities against its validity are *Bright* v. *Forth* (1595), Cro. Eliz. 442 ; *Melwich* v. *Luter* (1588), 4 Co. Rep. 26 b, note at end of 3rd resolution ; *Finch's* (*Sir Moyle*) *Case* (1606), 6 Co. Rep. 63 a ; *R.* v. *Buccleugh* (*Duchess*) (1704), 6 Mod. Rep. 150 ; see Watkins on Copyholds, Vol. I., pp. 15 *et seq.* ; Scriven on Copyholds, p. 10 ; Elton on Copyholds, p. 10.

(*p*) Watkins on Copyholds, Vol. I., p. 15 ; and see p. 3, *ante*.

(*q*) *A.-G.* v. *Ewelme Hospital* (1853), 17 Beav. 366.

(*r*) Watkins on Copyholds, Vol. I., p. 15 ; Coke, The Compleat Copy-holder (1673), s. 31.

(*s*) Watkins on Copyholds, Vol. I., p. 26 ; *Finch's* (*Sir Moyle*) *Case*, *supra*.

(*a*) *Soane* v. *Ireland* (1808), 10 East, 259.

(*b*) *Curzon* v. *Lomas* (1803), 5 Esp. 60.

(*c*) *Delacherois* v. *Delacherois* (1864), 11 H. L. Cas. 62, 103. As to a purchase of

44. If demesne lands of a manor are treated by conveyance as a property distinct from the manor, they cease for ever to form part of the manor, although the rents and dues may remain (*d*).

(4) Conveyance of demesne lands.

Where demesne lands of a manor are by custom demisable by the lord to be held by copy of court roll according to the custom, the creation of a common law tenancy at will by the lord outside the custom will not sever the lands from the manor; but the creation of a common law tenancy from year to year by the owner in fee will effect a permanent severance of the land from the manor and a total destruction of the customs of the manor with regard to the land so severed (*e*). But the creation of a common law tenancy from year to year by a lessee of the manor, without the concurrence of his mortgagee, does not effect a severance of those lands from the manor so as to disable the lord from ever again demising or granting the same by copy of court roll, because, as against the mortgagee, the tenancy created by the mortgagor is a mere tenancy at will (*f*).

(5) Allotment to tenant.

45. Where manorial waste lands are allotted by private agreement (*g*) between the lord and his tenant, or under statutory (*h*) authority to a tenant, the allottee takes the land as freehold, unless the statutory authority directs expressly to the contrary. And, as a general rule, where manorial lands are allotted as freehold under an Inclosure Act, all incidents usually attaching to freehold lands pass with them, including rights as to minerals (*i*), unless, by special provision of the Legislature, specific rights are reserved. Thus rights of sporting over allotted lands can only be reserved to the lord by positive reservation (*k*).

(6) Reduction in number of tenants.

46. When the manorial lands have been enfranchised or otherwise converted into freeholds so that the number of tenants of the manor has become reduced below two, the manor will be destroyed (*l*).

Suspension of seignory.

47. If a lord having a limited interest, such as a life interest, in the manor purchase manorial lands held of the manor, the seignory in those lands will be suspended only during the existence of the interest of the purchaser, and upon its determination will revive for the benefit of those entitled to the manor (*m*), unless the purchase was made under statutory or other express power.

customary tenements by the lord of the manor, see *Bingham* v. *Woodgate* (1831), 1 Russ. & M. 750.

(*d*) *Delacherois* v. *Delacherois* (1864), 11 H. L. Cas. 62, 103.

(*e*) *Re London and South Western Rail. Co. Act*, 1856, *Ex parte Henley* (*Lord*) (1861), 29 Beav. 311.

(*f*) *Ibid.*

(*g*) *Paine* v. *Ryder* (1857), 24 Beav. 151.

(*h*) *Townley* v. *Gibson* (1788), 2 Term Rep. 701; and see p. 110, *post.*

(*i*) See p. 22, *post.*

(*k*) *Sowerby* v. *Smith* (1874), L. R. 9 C. P. 524, Ex. Ch.; *Devonshire* (*Duke*) v. *O'Connor* (1890), 24 Q. B. D. 468, C. A. As to allotments and inclosure, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 535 *et seq.*

(*l*) See p. 11, *ante.*

(*m*) *Bingham* v. *Woodgate* (1829), 1 Russ. & M. 32; (1831), 1 Russ. & M. 750; and, as to demesne lands, see *Re London and South Western Rail. Co. Act*, 1856, *Ex parte Henley* (*Lord*), *supra.*

Part II.—The Lord of the Manor.

SECT. 1. The Lord's Rights.

SECT. 1.—*The Lord's Rights.*

SUB-SECT. 1.—*Mines and Minerals*

General rule.

48. As a general rule the mines and minerals in or under manorial lands are the property of the lord, although where there are tenants of the manor the possession is in the tenant, who may therefore maintain trespass against third parties for breaking and entering below the surface, even though no trespass be committed on the surface (*n*). The lord also may bring an action against anyone taking such mines and minerals to recover the same (*o*). Where the mines belong to the lord, and there is no custom allowing the customary tenant to work them, neither the lord nor the tenant can work them without the licence of the other (*p*).

In a proper case the High Court will grant an interlocutory injunction to restrain the working of mines within a manor at the instance of the lord, notwithstanding that the defendant alleges that the minerals are under freehold lands subject only to a quit-rent payable to the lord (*q*).

Mines under freehold tenement.

49. As regards minerals under a freehold tenement within a manor, the presumption is that the property in, as well as the possession of, them is in the tenant. This presumption is, however, rebuttable; and it is open to the lord to prove by evidence of general reputation and acts of ownership by the lord in the minerals under other similar tenements within the ambit of the manor that the minerals in question belong to the lord, and not to the tenant (*r*). If tenants of customary freeholds or their lessees have for a number of years openly worked the coal and other minerals under their tenements to the knowledge of the lord, it is a question of fact whether the tenants have a right to get such minerals (*s*).

Mines under copyhold tenement.

50. As regards mines and minerals under copyhold tenements of a manor, they belong to the lord, but, inasmuch as the estate of the copyholder is in the soil throughout his tenement (except the mines and minerals), the lord, in the absence of custom or other enabling power, cannot get them without rendering himself liable to an action for trespass at the suit of the tenant (*t*); and this is so notwithstanding that the tenant has let the surface to a third party (*u*). Large stones embedded in the soil of a copyhold tenement

(*n*) *Lewis* v. *Branthwaite* (1831), 2 B. & Ad. 437. As to mines and minerals, see title MINES, MINERALS, AND QUARRIES; and as to mining rights after inclosure of the waste of a manor, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 53.

(*o*) *Eardley* v. *Granville* (1876), 3 Ch. D. 826.

(*p*) *Winchester* (*Bishop*) v. *Knight* (1717), 1 P. Wms. 406; *Aspden* v. *Seddon* (1876), 1 Ex. D. 496, C. A., *per* MELLISH, L.J., at p. 510.

(*q*) *Greenwich Hospital Commissioners* v. *Blackett* (1848), 12 Jur. 151.

(*r*) *Barnes* v. *Mawson* (1813), 1 M. & S. 77.

(*s*) *Parrott* v. *Palmer* (1834), 3 My. & K. 632.

(*t*) *Eardley* v. *Granville*, *supra*; and see *Batten-Pooll* v. *Kennedy*, [1907] 1 Ch. 264.

(*u*) *Bowser* v. *Maclean* (1860), 2 De G. F. & J. 415.

prior to the commencement of the holding, which have been there as far back as living memory will go, are part of the tenement, and belong to the lord to the same extent as the tenement, and therefore cannot be disposed of by the tenant (*a*). But it is otherwise if such stones have come upon the tenement since the tenancy began (*a*).

Rights regulated by custom.

51. The rights as to minerals of the lord on the one hand and of the tenants on the other are regulated by custom (*b*). Apart from custom, the lord has no right as lord to enter upon a copyhold tenement of the manor to bore for and work mines or minerals (*c*); and the tenant may obtain an injunction restraining him from doing so (*d*). Where a particular kind of mineral has never been worked before, there cannot be a custom for either the lord or the tenant to work it (*e*).

A custom enabling the lord to dig and get minerals beneath the surface of copyhold or customary freehold lands without compensation for subsidence of the surface or damage to buildings thereon is bad for unreasonableness, inasmuch as it amounts to a right in the lord to deprive his grantee of the enjoyment of the thing granted without compensation (*f*).

Copyholder's rights.

A custom for a copyholder to work and sell coal under his tenement without the consent of the lord, provided he does not thereby compete with the lord in the sale of his coal gotten within the manor (*g*), or to break the surface and dig and get clay without limit in, upon, and out of a copyhold tenement for the purpose of making bricks to be sold off the manor (*h*), or to dig, get, carry away, and sell sand, sandstone, gravel, and clay from a copyhold tenement without the licence of the lord (*i*), is a good custom.

Co-existing customs.

There may be two co-existing customs in a manor, as, for example, one for the lord to have the tin under the surface and the other for the tenants to have the copper. The usage which establishes the right of the lord to the one may also establish the right of the tenants to the other (*k*).

Extent of lord's rights.

Where the lord has a right to work the minerals under manorial lands, he may construct a tramway through the subsoil of the manorial lands for the purpose of working the mines which are

(*a*) *Dearden* v. *Evans* (1839), 5 M. & W. 11.

(*b*) Watkins on Copyholds, Vol. I., p. 405; *Aspden* v. *Seddon* (1876), 1 Ex. D. 496, C. A. For instances of customs authorising copyhold tenants to get minerals out of their holdings, see *Hanmer* v. *Chance* (1865), 4 De G. J. & Sm. 626 (sand, gravel, and clay); *Salisbury* (*Marquis*) v. *Gladstone* (1861), 9 H. L. Cas. 692 (clay); and *Sitwell* v. *Worrall* (1898), 79 L. T. 86 (coal).

(*c*) *Bourne* v. *Taylor* (1808), 10 East, 189.

(*d*) *Grey* v. *Northumberland* (*Duke*) (1806), 13 Ves. 236. In an action by a copyholder against a stranger to restrain him from getting minerals under the copyhold tenement, the lord may be joined as a defendant (*Shafto* v. *Bolckow, Vaughan & Co.* (1887), 34 Ch. D. 725).

(*e*) *Player* v. *Roberts* (1631), W. Jo. 243; *Winchester* (*Bishop*) v. *Knight* (1717), 1 P. Wms. 406.

(*f*) *Hilton* v. *Granville* (*Earl*) (1844), 5 Q. B. 701.

(*g*) *Sitwell* v. *Worrall*, *supra*.

(*h*) *Salisbury* (*Marquis*) v. *Gladstone*, *supra*.

(*i*) *Hanmer* v. *Chance*, *supra*.

(*k*) *Curtis* v. *Daniel* (1808), 10 East, 273.

SECT. 1. The Lord's Rights.

within the manor, but not for other purposes, or for carrying minerals gotten under lands outside the manor (*l*).

Where minerals have been taken from under a copyhold tenement, the tenant may occupy and enjoy the space so left. Thus, he may descend the shaft of a mine and use the excavations below for any rational purpose (*m*).

Mines and minerals in and under the wastes.

52. The mines under the waste and demesne lands of a manor belong *primâ facie* to the lord (*n*) and pass with the soil on a conveyance thereof, unless specially reserved (*o*).

The lord may take gravel, marl, loam, and the like from the waste of the manor, so long as he does not infringe upon the commoners' rights, his right to do so being quite independent of his right of approvement under the Statute of Merton or at common law, and existing by reason of his ownership of the soil, subject only to the interests of the commoners, if any, upon whom lies the burden of showing that their rights have been thereby injured (*p*).

Grant of surface.

53. Where the lord parts with the surface of lands within the manor, whether waste or copyhold, and whether by legislative enactment or by deed *inter partes*, he cannot work the minerals beneath the surface of such lands so as to destroy it, either unconditionally or upon payment of compensation, unless express power to do so is given or reserved to him by such enactment (*q*) or deed (*r*).

Crown manor.

54. If a copyholder brings an action of trespass against the licensee of the Crown in respect of minerals under the copyholder's tenement, the Crown may take proceedings to stay the action and to have a declaration of the rights of the Crown within the manor (*s*).

SUB-SECT. 2.—*Trees and Sporting.*

General rule.

55. The lord of a manor has not by law, independently of custom, any such property or interest in the timber growing upon copyhold land of inheritance as to entitle him as lord to enter, without the copyholder's consent, upon such land to cut down for his own use and benefit the timber growing thereon, even though he leave sufficient quantity for the tenant's reasonable botes and estovers (*t*). Although the property in the trees is in the lord,

(*l*) *Bowser* v. *Maclean* (1860), 2 De G. F. & J. 415; *Eardley* v. *Granville* (1876), 3 Ch. D. 826, *per* JESSEL, M.R., at p. 833.

(*m*) *Eardley* v. *Granville*, *supra*.

(*n*) *Filewood* v. *Palmer* (1729), Mos. 169; *Place* v. *Jackson* (1824), 4 Dow. & Ry. (K. B.) 318; *Roberts* v. *Haines* (1856), 6 E. & B. 643; *A.-G.* v. *Hanmer* (1858), 27 L. J. (CH.) 837.

(*o*) *Townley* v. *Gibson* (1788), 2 Term Rep. 701.

(*p*) *Hall* v. *Byron* (1877), 4 Ch. D. 667. As to the lord's right to approve, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 503 *et seq.*

(*q*) *Wakefield* v. *Buccleuch* (*Duke*) (1870), L. R. 4 H. L. 377.

(*r*) *Hext* v. *Gill* (1872), 27 L. T. 291, C. A.

(*s*) *A.-G.* v. *Barker* (1872), L. R. 7 Exch. 177.

(*t*) *Whitechurch* v. *Holworthy* (1815), 4 M. & S. 340. As to what is considered

the possession is in the tenant; so that if either the lord or a stranger cut them, the copyholder may maintain trespass against him; but on the other hand, if either the copyholder or a stranger cut them, the lord can bring an action to recover them (*u*). Hence, in the absence of an enabling custom, the trees must remain uncut (*x*).

Rights of lord.

56. By custom the lord may have the right to cut wood and underwood, but a grant of this right to the tenant will not merge in the copyhold (*a*), and as a general rule the lord is entitled to be paid compensation for timber growing upon a copyhold tenement upon enfranchisement thereof (*b*).

Timber trees severed from a copyhold tenement, either by accident or by the wrongful act of a tenant or a stranger, may be taken by the lord, as the tenant's right ceases upon severance (*c*); but if a tree is cut down, the lord cannot compel the tenant to plant another in its place (*d*).

Rights of tenant.

57. Where a tenant has a right to fell timber for necessary botes or estovers, he may sell the lops, tops, and bark to defray the cost of repair (*e*); and if there be any unavoidable overplus suitable for botes or estovers, he may either sell it or keep it for future use (*f*).

If a tenant has a right to fell timber for certain purposes, he is presumed to fell it for those purposes, unless there is evidence to the contrary (*g*).

By custom a tenant may fell timber for his own use, besides necessary repairs, without the licence of the lord (*h*).

A copyholder who has an estate of inheritance in his tenement, or an estate for life with a power to name a successor, may prescribe against the lord to cut and sell trees on his tenement, but not if his estate be one merely for life (*i*).

A tenant who improperly fells timber is liable to a forfeiture of his tenement to the lord (*k*).

Sporting rights.

58. The lord has the right of sporting over the wastes as owner of the soil, and he may have a right of free warren within the

to be a "timber" tree, see title AGRICULTURE, Vol. I., p. 296; and as to estovers, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 466 *et seq.*

(*u*) *Eardley* v. *Granville* (1876), 3 Ch. D. 826, *per* JESSEL, M.R., at p. 832.

(*x*) *Ibid.*

(*a*) *Fawlkner* v. *Fawlkner* (1681), 1 Vern. 21.

(*b*) *Reynolds* v. *Woodham Walter* (*Lord of the Manor*) (1872), 27 L. T. 374.

(*c*) Watkins on Copyholds, Vol. I., p. 401; *Ailner's Case* (1664), 1 Keb. 691; *Cage* v. *Dod* (1650), Sty. 233; and see *Blackett* v. *Lowes* (1814), 2 M. & S. 494.

(*d*) *Eardley* v. *Granville*, *supra*, at p. 833.

(*e*) Watkins on Copyholds, Vol. I., p. 399; *Sanford* v. *Stevens* (1616), 3 Bulst. 281.

(*f*) Watkins on Copyholds, Vol. I., p. 401; *East* v. *Harding* (1596), Cro. Eliz. 498.

(*g*) *Doe* d. *Foley* v. *Wilson* (1809), 11 East, 56.

(*h*) *Blewett* v. *Jenkins* (1862), 12 C. B. (N. S.) 16.

(*i*) Watkins on Copyholds, Vol. I., p. 401; *Powel* v. *Peacock* (1604), Cro. Jac. 30; and see *Mardiner* v. *Elliot* (1788), 2 Term Rep. 746.

(*k*) Watkins on Copyholds, Vol. I., p. 403; 1 Roll. Abr. tit. Copyholds, 508, D, pl. 20; *Nash* v. *Derby* (*Earl*) (1705), 2 Vern. 537; and see p. 48, *post.*

SECT. 1. The Lord's Rights.

precincts of the manor; but such rights are not manorial rights or rights which can be said to be properly incidental to a manor (*l*).

SUB-SECT. 3.—*Fines.*

Nature of fines.

59. Where there are tenants of a manor the lord is by custom entitled to be paid what is called the lord's fine (*m*). When a manor is vested in trustees the fines which they receive are income in their hands, because they are the ordinary fruits of a manor, and, as such, to be enjoyed by the beneficiary in possession (*n*). Similarly, where it is customary, but not obligatory upon the lord, to renew grants of copyholds on leases for lives, the fines payable by custom upon such renewals belong to the lord wholly as income, even though he be only tenant for life of the manor (*o*).

Where the lord has contracted to sell the manor, and a fine becomes due before, but is not paid till after, completion of the purchase, it belongs to the vendor (*p*).

Occasions on which fine payable.

60. There are three occasions upon which the lord's fine may be payable (*q*):—

(1) Upon change of lord, sometimes called a "general fine" (*r*);

(2) Upon the licence of the lord being obtained by the tenant to enable the latter to do some act which he could not do without such permission;

(3) Upon change of tenant, sometimes called a "dropping fine" (*r*)

Change of lord.

61. As regards the first class, the rule is that the change of lord must be due to the act of God, and not the lord himself (*s*), from which it follows that the death of the lord is usually the only occasion upon which a fine of this class is payable (*t*), no matter what his estate may be (*u*); and a special custom is good under which a general fine is due upon the death of the last general admitting lord, notwithstanding he has sold or aliened the manor before his death (*w*).

The right to the fine of this class generally arises in connection with what are known as tenant-right estates, where the tenement is granted by the lord of the manor for the joint lives of himself and the tenant. Hence, on the death of the lord the tenancy is determined, and a fresh grant is requisite from the new lord, and on admittance under the new grant a fine becomes payable. As all

(*l*) *Sowerby* v. *Smith* (1874), L. R. 9 C. P. 524, Ex. Ch.; and see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 501, 576 *et seq.*

(*m*) Watkins on Copyholds, Vol. I., pp. 345 *et seq.*

(*n*) *Cowley* (*Earl*) v. *Wellesley* (1866), 35 Beav. 640.

(*o*) *Re Medows, Norie* v. *Bennett*, [1898] 1 Ch. 300.

(*p*) *Cuddon* v. *Tite* (1858), 1 Giff. 395; *Garrick* v. *Camden* (*Earl*) (1790), 2 Cox, Eq. Cas. 231; *Hardwicke* (*Earl*) v. *Sandys* (*Lord*) (1844), 12 M. & W. 761.

(*q*) Watkins on Copyholds, Vol. I., p. 345.

(*r*) *Somerset* (*Duke*) v. *France* (1725), 1 Stra. 654; see also *Lowther* v. *Raw* (1735), 2 Bro. Parl. Cas. 451.

(*s*) Co. Litt. 59 b.

(*t*) Watkins on Copyholds, Vol. I., p. 345; *Re Thwaites' Manor* (1599), Cary, 6; Co Litt. 59 b.

(*u*) Watkins on Copyholds, Vol. I., p. 346; *Somerset* (*Duke*) v. *France*, *supra*.

(*w*) *Lowther* v. *Raw*, *supra*.

the tenancies so held will determine on the death of the lord, a general admittance by the new lord becomes necessary, and hence also what is called a general fine on such admittance (*x*).

Licence.

62. As regards the second class of cases above referred to, the rule is that the lord is only entitled to such a fine by special custom (*a*). The acts which as a rule the lord is asked to license are to alien (*b*), demise, exchange, and the like (*a*). Fines for licences to alien by manorial tenants, other than tenants *in capite* of the King, are expressly preserved by statute (*c*).

A fine on alienation, which must not be confused with heriots and reliefs (*d*), may be by tenure, special reservation, or by custom, and is a money payment by the incoming tenant to the lord upon alienation by the former tenant of his tenement (*e*). If the fine is due by tenure, the lord may distrain for it, but otherwise he can only distrain by special custom (*e*).

The lord cannot demand a full fine on alienation of a part only of the land, but only an apportioned part of the full amount (*f*).

Change of tenant.

63. The third class is the most important class, and the fine payable has been defined as a sum of money payable by custom to the lord on the admittance of every tenant for each tenement to which he is so admitted (*g*). The cause of the change of tenant is immaterial unless the custom of the manor otherwise provides (*g*).

In some manors there is a custom that the fine upon the admittance of a stranger shall be larger proportionally than that upon the admittance of one who is already a tenant of the manor. In such a manor a stranger may take admittance to a tenement of small value upon which a small fine is payable, for the express purpose of getting the benefit of the lower rate of fine upon admittance to a tenement of large value (*h*); but if the first purchase is fraudulent or merely colourable, the lord may treat the first admittance as having conferred no right to the benefit of the custom, and may demand a fine upon the second admittance upon the higher scale (*i*).

Death of tenant.

64. Upon the death of a copyhold tenant, even if he held only for a term of years (*j*), the lord is entitled to have a new tenant on the rolls, and as a rule, but not invariably (*k*), to take a fine upon

(*x*) *Somerset* (*Duke*) v. *France* (1725), 1 Stra. 654; as to tenant right, see p. 68, *post*.
(*a*) Watkins on Copyholds, Vol. I., pp. 384, 385.
(*b*) *Yaxley* v. *Rainer* (1695), 1 Ld. Raym. 44.
(*c*) Stat. 12 Car. 2, c. 24 (1660), s. 6.
(*d*) Watkins on Copyholds, Vol. II., p. 99; see pp. 37, 45, *post*.
(*e*) *Hungerford* v. *Haviland* (1626), W. Jo. 132.
(*f*) *Holland* v. *Lancaster* (1690), 2 Vent. 134. A fine on alienation seems to be analogous to the relief which was due on the accession of the heir.
(*g*) Watkins on Copyholds, Vol. I., p. 346; Co. Litt. 59 b; Kitchin on Courts Leet, 2nd ed. (1653), p. 122 a; *Bath* (*Earl*) v. *Abney* (1757), 1 Burr. 206.
(*h*) *R.* v. *Boughey* (1823), 1 B. & C. 565; and see p. 100, *post*.
(*i*) *A.-G.* v. *Sandover*, [1904] 1 K. B. 689; and see p. 31, *post*.
(*j*) *Bath* (*Earl*) v. *Abney*, *supra*.
(*k*) For an instance of a manor where an heir paid no fine on admittance, see *Doe* d. *Tarrant* v. *Hellier* (1789), 3 Term Rep. 162, 169.

SECT. 1. The Lord's Rights.

his admittance (*l*). But the lord will not be entitled to a fine where the death occurs between the commencement and completion of proceedings for enfranchisement under the Copyhold Act, 1894 (*m*).

Fine due after admittance.

65. In the case of a fine upon admittance the fine is due after and as a consequence of such admittance, and not before admittance (*n*). Hence it need not be tendered before admittance (*o*); and consequently, on a sale of a copyhold estate, the fine on the admittance of the purchaser is payable by the purchaser, and not by the vendor; and the non-payment thereof by the vendor is no breach of a covenant by the vendor to do all acts and deeds necessary for the perfecting of the purchaser's title at the cost of the vendor (*p*).

But if a vendor of copyholds is an assignee in the second degree from an unadmitted devisee and has contracted to give his purchaser the best title he can to the legal estate in the copyholds at his own expense, he must pay all the fines required to enable the purchaser to obtain a surrender to himself, as the title to the legal estate is not complete until the vendor has been admitted (*q*).

Where the proceeds of sale of lands taken by a railway company are invested in the purchase of copyholds, the company is not bound to pay the fine on admittance of the purchaser (*r*).

When fine payable.

66. The question whether a fine is payable always depends upon the question whether admittance is or was necessary upon the change of tenant. For instance, the heir of an unadmitted surrenderee who has taken his surrender from a remainderman will be entitled to be admitted on the death of the tenant for life on payment of a fine upon his own admittance, but without being liable to pay a fine in respect of his ancestor, as the admittance of the tenant for life enures for the benefit of the remainderman (*s*).

So also no fine will be payable by reason of the death or assignment by a person merely equitably entitled to the copyhold tenement (*t*), or by the gift of a mere power (*u*) to appoint or sell, or upon the falling into possession of interests in remainder where the admittance of the first particular tenant has enured for the

(*l*) *Myers* v. *Hodgson* (1876), 1 C. P. D. 609.

(*m*) 57 & 58 Vict. c. 46, s. 49; compare Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18); see pp. 29, 129, *post*.

(*n*) *Graham* v. *Sime* (1801), 1 East, 632; *Barrow* v. *Barrow* (1855), 3 W. R. 587.

(*o*) Watkins on Copyholds, Vol. I., p. 347.

(*p*) *Graham* v. *Sime*, *supra*; *Barrow* v. *Barrow*, *supra*.

(*q*) *Whiteley* v. *Taylor* (1876), 35 L. T. 187, C. A.

(*r*) *Re Eastern Counties Railway, Ex parte Sawston* (*Vicar*) (1858), 6 W. R. 492.

(*s*) *Garland* v. *Alston* (1858), 3 H. & N. 390; but the heir would probably have been obliged to pay a fine in respect of his ancestor had the surrenderor been entitled in possession at the time of the surrender (*R.* v. *Coggan* (1805), 6 East, 431; and see p. 33, *post*).

(*t*) Watkins on Copyholds, Vol. I., p. 351; *Hall* v. *Bromley* (1887), 35 Ch. D. 642, C. A.

(*u*) Watkins on Copyholds, Vol. I., p. 353; *Holder* d. *Sulyard* v. *Preston* (1769), 2 Wils. 400.

benefit of all in remainder (*v*), unless by special custom a fine is payable in such a case (*w*). But an assignee of a person having a reversionary interest must be admitted in order to clothe himself with the full legal estate, and consequently must pay a fine upon such admittance (*x*).

Effect of covenant to surrender.

A contract or covenant by a tenant on the court rolls to surrender to a third party presented to the homage, but not followed by surrender, will give the lord no right to a fine; nor will the assignment of the benefit of the contract or covenant by the third party to another entitle the lord to a fine (*y*), and no fine is payable on a mortgage by conditional surrender when the mortgagee is not admitted (*z*).

If a tenant on the court rolls makes a surrender limiting to himself a new estate in his old tenement such as will necessitate his admittance afresh, as, for instance, where a tenant surrenders in favour of himself and two others as joint tenants, the lord will be entitled to a fine upon such fresh admittance (*a*).

Release.

If a person, having no right to admittance, be in fact admitted and afterwards takes a release from the person rightfully entitled to admittance, no new fine will be due, because the releasee has already been admitted (*b*), and a release by one joint tenant on the rolls of his interest to his co-tenant gives the lord no right to a fine (*c*).

Lands Clauses Consolidation Act, 1845.

67. Where copyholds are taken under the Lands Clauses Consolidation Act, 1845, notwithstanding that they pass as freeholds on enrolment of the conveyance to the company, yet the company is liable to pay or account to the lord for the accustomed fines until enfranchisement (*d*). These fines must be included in the compensation for enfranchisement (*e*). But as between a tenant for life and remainderman of the manor the effect of the Act is to deprive the tenant for life of dropping fines which but for the purchase would have been payable during the rest of his life, and in lieu thereof to give him the interest of the compensation money, which is calculated so as to take into account all future fines which would but for the destruction of the copyhold tenure have accrued to him and his successors after his death. It does not give him any particular interest in respect of any particular fines that may accrue at any particular time (*f*).

(*v*) Watkins on Copyholds, Vol. I., p. 358; *Blackburne* v. *Graves* (1673), 1 Mod. Rep. 102, 120.

(*w*) *Richardson* v. *Kensit* (1843), 5 Man. & G. 485; *Smith* v. *Hobbs* (1887), 3 T. L. R. 293.

(*x*) Watkins on Copyholds, Vol. I., p. 348.

(*y*) *R.* v. *Hendon* (*Lord of the Manor*) (1788), 2 Term Rep. 484.

(*z*) *Fawcet* v. *Lowther* (1757), 2 Ves. Sen. 300, 302.

(*a*) Watkins on Copyholds, Vol. I., p. 348; see *Sheppard* v. *Woodford* (1839), 5 M. & W. 608.

(*b*) Watkins on Copyholds, Vol. I., p. 350; Co. Litt. 59 a, note (2).

(*c*) *Wase* v. *Pretty* (1621), Win. 3,

(*d*) 8 & 9 Vict. c. 18, s. 95; see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 136.

(*e*) *Leconfield* (*Lord*) v. *London and North Western Rail. Co.*, [1907] 1 Ch. 38.

(*f*) *Re Wilson's* (*Sir T. M.*) *Estate* (1863), 3 De G. J. & Sm. 410; *Leconfield* (*Lord*) v. *London and North Western Rail. Co.*, *supra*.

SECT. 1. The Lord's Rights.

The lord is not entitled under ss. 95 and 96 of the Act to any fine on the execution of the conveyance of the copyholds, or on the enrolment thereof, as upon a statutable admittance by implication or compensation for loss (*g*).

Remaindermen etc.

68. Where the admittance of a tenant for life enures as the admittance of all in remainder, the lord may require the tenant for life to pay the whole fine and leave him to obtain contribution from the remaindermen (*h*); or the lord himself may apportion it between the tenant for life and the remaindermen (*i*), in which case the proportion due from each remainderman will not be payable until his interest falls into possession (*k*). By special custom the lord may require a full fine to be paid by each remainderman (*l*).

Where a person is admitted as special occupant, he must pay a fine as though he were a purchaser, but it will be calculated according to the probable duration of the life of the *cestui que vie* (*m*).

Several tenements.

69. Where a copyholder holds several tenements by several services, the lord ought to assess and demand the fines therefor severally (*n*); but it seems that by special custom a person taking admittance to several tenements may pay a single fine in respect of all (*o*).

Payment of fine.

70. The fine must be paid to the lord, but payment to his steward or deputy steward duly authorised is equivalent to payment to the lord (*p*).

An unpaid fine is not a charge upon the tenement in respect of which it is assessed (*q*).

The High Court has no inherent jurisdiction to order the fine payable upon the admittance of an infant to be raised by mortgage (*r*).

Fines payable in respect of admittances of new trustees of copyholds, or of the heir-at-law of the last surviving trustee thereof, as between the parties beneficially interested, must be borne and paid by the equitable tenant for life and remaindermen in proportion to their respective interests (*s*).

Requisites for payment.

71. A fine is a payment which must be reasonable, assessed, and demanded by the lord from the tenant (*t*). There is no

(*g*) *Ecclesiastical Commissioners* v. *London and South Western Rail. Co.* (1854), 14 C. B. 743.
(*h*) *Kensington* v. *Mansell* (1806), 13 Ves. 253 ; and see p. 34, *post.*
(*i*) *Ibid.*, at p. 246.
(*k*) *Ibid.*, at p. 254.
(*l*) *Doe* d. *Whitbread* v. *Jenney* (1804), 5 East, 522 ; and see *Phypers* v. *Eburn* (1836), 3 Bing. (N. C.) 250.
(*m*) Watkins on Copyholds, Vol. I., p. 376.
(*n*) *Ibid.*, p. 366 ; *Grant* v. *Astle* (1781), 2 Doug. (K. B.) 722 ; *Hobart* v. *Hammond* 1600), 4 Co. Rep. 27 b ; *Taverner* v. *Cromwell* (1584), 4 Co. Rep. 27 a.
(*o*) *Johnstone* v. *Spencer (Earl)* (1885), 30 Ch. D. 581, *per* NORTH, J., at p. 592.
(*p*) *Bridges* v. *Garrett* (1870), L. R. 5 C. P. 451, Ex. Ch.
(*q*) Watkins on Copyholds, Vol. I., p. 384 ; 1 Roll. Abr. 274.
(*r*) *Harbroe* v. *Combes* (1874), 43 L. J. (CH.) 336.
(*s*) *Re Bullock's Settled Estates, Lofthouse* v. *Haggard* (1904), 91 L. T. 651.
(*t*) *Grant* v. *Astle, supra* ; *Willowe's Case* (1608), 13 Co. Rep. 63.

such thing as a claim for a *quantum meruit* for a copyhold fine (*u*).

Where the lord demands from the tenant on admittance a fine of larger amount than is warranted by custom, the tenant may pay the fine demanded under protest, and sue for the excess as money had and received to his use (*x*). But where the question as to the amount of the fine is one which affects the tenants of the manor as a whole, application may be made to the court for a declaration as to the right in question (*y*).

Excessive demand.

A dispute as to the amount of a fine may also be raised in an action asking for a forfeiture or of trespass for seizure, or in an action for the fine (*z*). Whether a fine demanded is reasonable is a question for a jury (*a*).

72. Fines may be considered under several categories, namely—

Classification of fines.

(1) Fines certain, which are definite in amount;

(2) Fines arbitrary, or arbitrable or reasonable fines, which are indefinite in amount;

(3) Multiplied fines, which occur in cases where the lord, under certain circumstances, is entitled to something more than a single fine.

Primâ facie all copyhold fines are arbitrary, and a custom must be shown to prove them certain; and for this purpose reference must be had to the court rolls or the customary or custumal of the manor (*b*). A fine certain is payable on demand immediately after admittance (*c*).

All fines *primâ facie* arbitrary.

73. A fine arbitrary, or arbitrable fine, was originally, and still is said to be, at the will of the lord, and therefore uncertain in amount. But although this is so, the rule is that it must be reasonable and relatively certain; and the established criterion of reasonableness is that it must not exceed two years' improved value of the tenement (*d*).

Amount of arbitrary fine.

A custom that in assessing a fine arbitrary the lord is not restricted in amount to any number of years' value of the tenement is bad for unreasonableness (*e*). But the rule is subject to modification according to circumstances. Thus, where there is a custom that upon a subsequent admittance of a person already admitted tenant of the manor the fine payable upon the subsequent admittance shall be nominal as compared with that payable upon the

(*u*) *Hayward* v. *Raw* (1861), 6 H. & N. 308.
(*x*) *Cowper* v. *Clerk* (1732), 3 P. Wms. 155.
(*y*) *Traherne* v. *Gardner* (1856), 5 E. & B. 913; see also p. 128, *post*.
(*z*) *Fraser* v. *Mason* (1883), 11 Q. B. D. 574, C. A., *per* LINDLEY, L.J., at p. 580.
(*a*) See *Cowper* v. *Clerk*, *supra*.
(*b*) Watkins on Copyholds, Vol. I., p. 370; *Gerard's (Lord) Case* (1615), Godb. 265; *Allen* v. *Abraham* (1612), 2 Bulst. 32.
(*c*) Watkins on Copyholds, Vol. I., p. 379; see generally title LIMITATION OF ACTIONS.
(*d*) *A.-G.* v. *Sandover*, [1904] 1 K. B. 689.
(*e*) *Douglas* v. *Dysart (Lord)* (1861), 6 L. T. 327, where the court intimated that two years' annual value was not the only criterion of reasonableness.

SECT. 1. The Lord's Rights.

admittance of a stranger, this right or advantage may be taken into consideration so as to constitute an exception to the rule, and allow of an increase in the amount payable upon the first admittance (*f*).

In all cases where the lord is not compellable to admit (*e.g.*, where the tenement has escheated to the lord and is about to be regranted), he is entitled to make the best bargain for himself that he can, and may demand an arbitrary fine quite unrestricted in amount (*g*).

Valuation of tenement.

74. In estimating the annual value of a tenement for the purpose of assessing a fine arbitrary, quit-rents may be deducted, but not land tax (*h*); and the annual value must be the improved annual value at the time of the assessment, and not the annual rent payable (*i*). Buildings on the land must be taken into account (*k*), and an allowance for repairs should be made (*l*).

Assessment.

75. It is generally the right and the duty of the lord or his steward to assess the fine arbitrary payable upon admittance to copyholds (*m*); but by special custom the homage, either in place of the lord or alternative to the lord, may make the assessment (*n*). The lord is not bound to assess the fine in pounds, shillings and pence; he may assess it at two years' improved value (*o*).

Fines must be assessed strictly according to the customary method, and the sum assessed must be demanded of the tenant personally by the lord or his steward (*p*); but the demand need not be in writing (*q*).

Unlike fines certain, a fine arbitrary is not payable on demand, but within a reasonable time after it has been duly demanded; and if the lord or his steward appoint some special time and place for payment, it must be made at such time and place (*r*).

It is not necessary that the assessment of a fine arbitrary should be entered on the court rolls (*s*).

Excessive demand.

76. The onus of showing that a fine arbitrary is unreasonable is on the tenant (*t*). If a tenant has reasonable grounds for alleging that an arbitrary fine demanded by the lord is excessive, and tenders what he fairly considers a reasonable fine, he is not

(*f*) *A.-G.* v. *Sandover*, [1904] 1 K. B. 689.
(*g*) Watkins on Copyholds, Vol. I., p. 372.
(*h*) *Ibid.*, p. 371.; *Grant* v. *Astle* (1781), 2 Doug. (K. B.) 722; *Halton* v. *Hassell* (1736), 2 Stra. 1042.
(*i*) *Verulam* (*Lord*) v. *Howard* (1831), 7 Bing. 327.
(*k*) Watkins on Copyholds, Vol. I., p. 379; Cases with Opinions (1791), p. 174.
(*l*) *Richardsan* v. *Kensit* (1843), 5 Man. & G. 485.
(*m*) *Fraser* v. *Mason* (1883), 11 Q. B. D. 574, C. A.
(*n*) Watkins on Copyholds, Vol. I., p. 371; 1 Roll. Rep. 48.
(*o*) *Fraser* v. *Mason*, *supra*.
(*p*) Watkins on Copyholds, Vol. I., p. 380; *Whitfield* v. *Hunt* (1784), 2 Doug. (K. B.) 727, n., 731, n.; *Denny* v. *Lemman* (1616), Hob. 135.
(*q*) *Trotter* v. *Blake* (1677), 2 Mod. Rep. 229.
(*r*) Watkins on Copyholds, Vol. I., p. 379; *Hobart* v. *Hammond* (1600), 4 Co. Rep. 27 b, 28 a.
(*s*) *Northwick* (*Lord*) v. *Stanway* (1805), 6 East, 56.
(*t*) *Doe* d. *Twining* v. *Muscott* (1844), 12 M. & W. 832.

liable to forfeit his tenement to the lord for non-payment of the fine demanded (*u*).

Remedy for non-payment.

77. Upon non-payment the lord may seize the tenement *quousque*, or, by special custom, absolutely (*w*), or he may sue in debt (*x*); as regards the latter cause of action the Civil Procedure Act, 1833 (*y*), begins to run against the lord from the date of admittance, and not from the date of assessment or demand (*a*). The right of the lord to seize *quousque* may be likewise barred on the expiration of twelve years after the heir has failed to come in and be admitted after proclamation or notice (*b*).

Multiplied fines.

78. Although as a rule a tenant who has been admitted to a tenement is liable to pay a single fine only as a consequence of his own admittance, yet there are numerous cases in which, owing to special circumstances, and particularly to the dealings with the property which have taken place, the lord is entitled to take more than a single fine. Such fines are sometimes referred to, though not very accurately, as "double fines." They may be treated under three heads:—

(1) Where the right to multiplied fines arises in consequence of the devolution of the property and the right to take admittance;

(2) Where the right arises in consequence of a surrender being made by more than one person;

(3) Where admittance is taken by more than one person.

(1) Payable on devolution.

79. The general rule is that, as the lord is entitled to a fine upon every occasion for admittance, he has a right to claim a fine upon every devolution of the right to admittance, even though no admittance has in fact been taken, provided that the ultimate right to take admittance is derived through every prior devolution; but mere substitution (*e.g.*, of one purchaser for another on a subsale), or any other equitable change of ownership, gives the lord no right to a fine (*c*).

If the heir of a tenant on the rolls dies having devised the tenement to another, but without having been admitted himself, the devisee cannot claim admittance without paying two fines, that is to say, the fine to which the lord would have been entitled had the testator been admitted and the fine upon the devisee's own admittance (*d*); and a lord cannot be required to enrol a surrender by the heir of a deceased reversioner without receiving the fine payable on the descent to the heir (*e*).

(*u*) *Barnes* v. *Corke* (1691), 3 Lev. 309.

(*w*) Watkins on Copyholds, Vol. I., p. 382; Coke, The Compleat Copy-holder (1673), s. 41; 2 Bl. Com. pp. 371, 372; see p. 56, *post*.

(*x*) Watkins on Copyholds, Vol. I., p. 383; *Whitfield* v. *Hunt* (1784), 2 Doug. (K. B.) 727, n.

(*y*) 3 & 4 Will. 4, c. 42, s. 3.

(*a*) *Monckton* v. *Payne*, [1899] 2 Q. B. 603; see generally title LIMITATION OF ACTIONS.

(*b*) See p. 58, *post*.

(*c*) *Bristow* v. *Booth* (1869), L. R. 5 C. P. 80.

(*d*) *Londesborough* (*Lord*) v. *Foster* (1863), 8 L. T. 240. The first fine is payable as a condition precedent to admittance, the second as a consequence. Hence the inaccuracy of the expression "double fine."

(*e*) *R.* v. *Dullingham* (*Lady of the Manor*) (1838), 8 Ad. & El. 858; and see note (*s*), p. 28, *ante*.

SECT. 1. The Lord's Rights.

But where a remainderman surrenders during the continuance of a life estate to a person who predeceases the life tenant, such person's heir is entitled to admittance on payment of a single fine (*f*). Again, where executors are empowered to sell copyholds, and they execute the power without being themselves admitted, a purchaser from them under the power is entitled to be admitted and pay one fine only for his admittance (*g*).

Sale under Settled Land Acts.

So where copyholds devised to trustees are sold by the tenant for life under the Settled Land Act, 1882, before the trustees are admitted, the lord cannot claim a fine in respect of the trustees' right to admittance, as the purchaser does not claim through them (*h*). The same rule would apply in the case of a vesting order made under the Trustee Act, 1893 (*i*).

(2) Payable on surrender by more than one person.

80. Where two or more persons entitled to a manorial tenement as tenants in common make a surrender, either severally or together, for the purpose of conveying the property to another, the lord will be entitled to as many fines upon the admittance of the surrenderee as there were tenants in common (*k*). And if by special custom a remainderman or reversioner is required to be separately admitted, a multiplied fine will probably by the same custom be payable upon the admittance of a purchaser on a joint surrender by the particular tenant and all in remainder (*l*).

But where a particular tenant and all in remainder, not requiring to be separately admitted, or coparceners or joint tenants, join together in a surrender to a single person, the surrenderors are considered as a single tenant conveying the entire fee; and consequently, in the absence of special custom, the surrenderee need only pay one fine (*m*). Similarly only one fine will be due upon the admittance of a purchaser from a husband and wife in her right, as they are one tenant (*m*).

(3) Payable on admittance of more than one person.

81. Where a surrender has been made in favour of a tenant for life with remainder over, the admittance of the particular tenant operates, in the absence of special custom, as the admittance of all in remainder, and, as a rule, one fine only is payable upon such admittance (*n*); but if by special custom (*o*) the lord is entitled to require the admittance of each remainderman separately, it seems that he may take a fine upon each such admittance. The opinion, however, has been expressed that even in such a case the fine so taken will be an apportioned part of the full fine, unless by

(*f*) *Garland* v. *Alston* (1858), 3 H. & N. 390.
(*g*) *Holder* d. *Sulyard* v. *Preston* (1769), 2 Wils. 400.
(*h*) *Re Naylor and Spendla's Contract* (1886), 34 Ch. D. 217, C. A.
(*i*) See *Paterson* v. *Paterson* (1866), L. R. 2 Eq. 31, decided on Trustee Act, 1850 (13 & 14 Vict. 55).
(*k*) Watkins on Copyholds, Vol. I., p. 368. But see Scriven on Copyholds, p. 194, where a contrary opinion is given upon the authority of *Garland* v. *Jekyll* (1824), 2 Bing. 273, and *Holloway* v. *Berkeley* (1826), 6 B. & C. 2. These two cases relate, however, to heriots, and not to fines.
(*l*) Scriven on Copyholds, p. 188.
(*m*) Watkins on Copyholds, Vol. I., p. 368; Coke, The Compleat Copy-holder (1673), s. 56. As to married women as tenants, see pp. 65 *et seq.*, *post.*
(*n*) *Barnes* v. *Corke* (1691), 3 Lev. 308; and see p. 30, *ante*, and pp. 77, 99, *post.*
(*o*) See *Ely* (*Dean*) v. *Caldecot* (1832), 8 Bing. 438.

special custom the lord is entitled to a full fine from the particular tenant and each remainderman as his estate falls into possession (*p*).

In the absence of such special custom, the lord may demand the fine from the tenant for life in possession, and the latter may recover contribution from those in remainder in proportion to their interests (*q*).

Persons entitled *successivé*.

82. Where persons are admitted to take in succession (or *successivé*, as it is called), as tenants in common, the rule is that the fine is calculated as follows, that is to say, one fine for the first taker, half a fine for the second, a quarter for the third, and so on (*r*); but if such persons take in succession as joint tenants, the admittance of one of them enuring for the benefit of all, only one fine will be payable (*s*).

Joint tenants.

83. In the case of joint tenants (for instance, trustees) if there is no special custom as to the fine payable upon their admittance, a fine equal to the sum of a fine (estimated according to the custom as on the admittance of a single person) in respect of the first joint tenant, half a fine in respect of the second joint tenant, a quarter of a fine in respect of the third joint tenant, and so on in like manner according to the number of joint tenants, is a reasonable fine (*a*). But a lord who is by custom entitled to a reasonable fine on each admittance to a copyhold hereditament may, on the admittance of two lives to a single tenement, assess the fine at three years' improved annual value and claim it by that designation (*b*).

There may be a custom that one only of several joint tenants may be admitted and pay a single fine on such admittance (*c*).

Tenants in common.

84. Tenants in common require to be admitted separately and each to pay a fine proportioned to the estate to which he is admitted. Thus, where the fine is two years' annual value, each of

(*p*) *Doe* d. *Whitbread* v. *Jenney* (1804), 5 East, 522; and see *Phypers* v. *Eburn* (1836), 3 Bing. (N. C.) 250; *Batmore* v. *Graves* (1674), 1 Vent. 260.

(*q*) *Carter* v. *Sebright* (1859), 26 Beav. 374; but see *Playters* v. *Abbott* (1833), 2 My. & K. 97; *Harris* v. *Harris* (No. 3) (1863), 32 Beav. 333; *Bradford* v. *Brownjohn* (1868), 3 Ch. App. 711; *Bull* v. *Birkbeck* (1843), 2 Y. & C. Ch. Cas. 447; and see p. 30, *ante*; p. 76, *post*.

(*r*) Watkins on Copyholds, Vol. I., p. 375.

(*s*) *Ibid.*, p. 376. Where copyholds were devised to B. for life with remainder to C. and D., his wife, for life, with the benefit of survivorship, remainder to E. for life, with remainder to F. in fee, a custom which gave the lord upon the admittance of C. and D. three years' value for a fine and a half (treating D. as the party next in remainder after C.), half a fine being one year's value, from E., and a quarter of a fine, being half a year's value, from F., was held to be reasonable, a proper deduction being made for repairs (*Richardson* v. *Kensit* (1843), 5 Man. & G. 485).

(*a*) *Wilson* v. *Hoare* (1839), 10 Ad. & El. 236; see also *Sheppard* v. *Woodford* (1839), 5 M. & W. 608.

(*b*) *Fraser* v. *Mason* (1883), 11 Q. B. D. 574, C. A. But where copyholds were surrendered to the use of three joint tenants, and before their admittance two of them, having exercised acts of ownership over the estate, executed a disclaimer in favour of the third, who sought admittance alone to the whole estate, it was held that the lord was nevertheless entitled to a fine as upon the admittance of all three (*Bence* v. *Gilpin* (1868), L. R. 3 Exch. 76, where it was also held that the disclaimer was void).

(*c*) *Howard* v. *Gwynn* (1901), 84 L. T. 505

SECT. 1. The Lord's Rights.

two tenants in common will pay a sum equal to two years' annual value of his share (*d*).

Effect of the Wills Act.

85. The Wills Act, 1837 (*e*), supersedes all customary (*f*) methods of passing customary and copyhold estates by will by enacting that all such estates may be devised or disposed of by will, executed in manner required by the Act, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not, prior to the Act, have been disposed of by will, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only or any other special custom, could not have been disposed of by will according to the power contained in the Act if the Act had not been made (*g*).

Payments to be made by devisee.

Where, however, any real estate of the nature of customary freehold or tenant right or customary or copyhold might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator has not surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will is to be entitled to be admitted except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator; and also where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and has not been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will is to be entitled to be admitted to the same real estate by virtue thereof except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will or of presenting, registering, or enrolling such surrender had the testator been duly admitted to such real estate and afterwards surrendered the same to the use of his will, all which

(*d*) Watkins on Copyholds, Vol. I., p. 376.

(*e*) 7 Will. 4 & 1 Vict. c. 26; see generally title WILLS.

(*f*) Before the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), the usual mode of transferring copyholds on death was for the tenant to surrender them to the use of his will and then by his will declare such uses as the custom of the manor might justify (Watkins on Copyholds, Vol. I., pp. 152, 153, 169). A surrender to the use of the will only passed those copyholds which the testator had at the time of such surrender (*Doe* d. *Ibbott* v. *Cowling* (1794), 6 Term Rep. 63). The customary method of disposing of copyholds by will differed in different manors; see *Nanson* v. *Barnes* (1869), L. R. 7 Eq. 253. In some manors no testamentary disposition of copyholds was possible at all.

(*g*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 3.

stamp duties, fees, fine, or sums of money are to be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid (*h*).

The Wills Act, 1837, cannot be construed so as to make fines payable which but for that Act would not have been payable (*i*).

SUB-SECT 4.—*Heriots.*

Definition

86. A heriot has been defined to be the best beast or other thing due to the lord on the death of or alienation by his tenant; and may be due by tenure, which is heriot service, or by custom (*k*).

Where the origin of the heriot is prior to the Statute of "Quia Emptores" (*l*), it is difficult in most cases to determine whether it is heriot service or heriot custom, but, in the absence of evidence showing a special custom to distrain, the fact that the heriot is recoverable by distress would seem to be conclusive that the heriot is heriot service.

Where the origin of the heriot is subsequent to the Statute of "Quia Emptores," the heriot can only be heriot service, as it can only have been created by deed or agreement (*m*). Such a heriot is sometimes called a suit heriot (*n*), though the opinion has been expressed that it is not a heriot at all, but only a kind of rent (*o*).

Heriot service.

87. Heriot service may be due by ancient tenure created prior to the Statute of "Quia Emptores" (*p*), or by express reservation by deed or agreement since that statute (*q*). Heriot service due by ancient tenure is never due except on the death of a tenant in fee of freeholds (*r*). But with regard to heriot service created by express reservation, the event upon which the heriot is due is determined by the reservation itself (*s*). If reserved on the granting of a lease, it must be made payable before the expiration of the lease (*t*).

If the grant of the lands was so ancient that the deed of creation cannot be shown, the lord must prescribe. Heriot service due on ancient grant must of necessity be due only on the death

(*h*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 4; and see *R.* v. *Wilberton* (*Lady of the Manor*) (1857), 29 L. T. (o. s.) 126, from which it appears that the statute probably makes the payment of the fines a condition precedent to the admittance of the devisee. There the testator was a mortgagee of the copyholds under a conditional surrender upon which he had not been admitted. See also *Garland* v. *Alston* (1858), 3 H. & N. 390.

(*i*) *Hall* v. *Bromley* (1887), 35 Ch. D. 642, C. A., *per* KEKEWICH, J., at p. 650.

(*k*) See note to *Lanyon* v. *Carne* (1669), 2 Wms. Saund. 485.

(*l*) 18 Edw. 1, c. 1 (1290).

(*m*) For the historical origin of heriots, see Coke, The Compleat Copy-holder (1673), s. 24; 4 Bac. Abr. tit. Heriot, A; Watkins on Copyholds, Vol. II., pp. 98 *et seq.*; *Garland* v. *Jekyll* (1824), 2 Bing. 273.

(*n*) *Parker* v. *Gage* (1689), 1 Show. 81.

(*o*) *Edwards* v. *Moseley* (1740), Willes, 192.

(*p*) 18 Edw. 1, c. 1 (1290); 14 Vin. Abr. tit. Heriot, p. 295.

(*q*) Watkins on Copyholds, Vol. II., p. 102; Coke, The Compleat Copy-holder (1673), s. 24. There might have been express reservation prior to the statute, but it is unlikely that there can now exist any evidence of such a reservation.

(*r*) Note to *Lanyon* v. *Carne*, *supra*; 14 Vin. Abr. tit. Heriot, pp. 294, 295.

(*s*) *Ibid.*; Watkins on Copyholds, Vol. II., p. 108.

(*t*) *Osborne* v. *Sture* (1686), 2 Lut. 1361.

SECT. 1. The Lord's Rights.

of a tenant in fee, for any particular estate must be of known beginning (*u*).

The opinion has been expressed, though the point has not been expressly decided, that heriot service can be claimed in respect of copyhold premises (*x*).

Remedies for recovery of heriot service.

88. If heriot service is due as an incident of ancient tenure, the lord may either seize or distrain for it, and he may seize it anywhere, either in or out of the manor (*y*); but he can only distrain upon the land of which the tenant died seised, and in respect of which the heriot is due (*z*). Where a heriot service is due by special reservation, it is in the nature of rent, and may be distrained for as such (*a*); and in this case it may also be recovered by action for debt or on covenant, but cannot be seized (*b*).

If the lord may distrain for his heriot, he may distrain anyone's beast found on the land, and retain it until the heriot service is paid (*c*).

Where on a lease for lives, or years determinable on lives, there is reserved for a heriot service upon the death of each life his or their best beast, and the lease is assigned, and then one of the lives dies, the beast of the assignee cannot be seized, though the lessor may distrain upon the land for the best beast of the deceased tenant (*d*).

If on the death of the tenant the best beast is eloigned (*e*), the lord's remedy is to distrain for it (*f*).

Where the heriot service is the best beast after the death of the tenant, the lord, in distraining for the heriot, need not show in his declaration (or avowry, as it was called) which is the best beast, or the value of it (*g*).

Apportionment of heriot service.

89. Where land is held by, or subject to, heriot service, and the lord purchases part of the tenancy, the whole heriot service will be thereby extinguished, because the heriot service, being by its nature entire, cannot be apportioned, and the lord cannot by his own act throw the burden of the entire heriot service upon the residue of the tenement not purchased by him (*h*).

(*u*) 14 Vin. Abr. tit. Heriot, p. 295 ; Watkins on Copyholds, Vol. II., p. 10.

(*x*) *Western* v. *Bailey*, [1897] 1 Q. B. 86, C. A., *per* LOPES, L.J., at p. 90 (Lord ESHER, M.R., and RIGBY, L.J., doubting). In the court below, [1896] 2 Q. B. 234, WILLS, J., treated the claim as one for heriot service due in respect of a copyhold tenement, but on appeal the court, on the evidence, thought the proper inference was that it was heriot custom, and not heriot service.

(*y*) *Austin* v. *Bennett* (1693), 1 Salk. 356.

(*z*) *Lanyon* v. *Carne* (1669), 2 Wms. Saund. 485 ; 4 Bac. Abr. tit. Heriot, B, p. 209 ; *Basingstoke Corporation* v. *Bolton* (*Lord*) (1852), 1 Drew. 270 and 3 Drew. 55 ; *Western* v. *Bailey, supra; Inchiquin* (*Earl*) v. *Burnell* (1795), 3 Ridg. Parl. Rep. 426 ; *Peter* v. *Knoll* (1584), Cro. Eliz. 32.

(*a*) 4 Bac. Abr. tit. Heriot, B, 211 ; *Lanyon* v. *Carne*, *supra*.

(*b*) *Doe* d. *Douglas* v. *Lock* (1835), 2 Ad. & El. 705, *per* Lord DENMAN, C.J., at pp. 742, 743 ; *Edwards* v. *Moseley* (1740), Willes, 192.

(*c*) 4 Bac. Abr. tit. Heriot, B, p. 212 ; *Major* v. *Brandwood* (1632), Cro. Car. 260.

(*d*) *Lanyon* v. *Carne*, *supra*, at p. 486.

(*e*) That is, removed out of the lord's jurisdiction.

(*f*) 14 Vin. Abr. tit. Heriot, p. 298.

(*g*) 4 Bac. Abr. tit. Heriot, C, p. 212.

(*h*) *Ibid.*, B, p. 208. *Chapman* v. *Pendleton* (1609), 2 Brownl. 293. But it is otherwise in the case of heriot custom ; see pp. 40, 43, *post*. As to multiplication of heriots, see pp. 39, 43, *post*.

90. If a tenant hold by fealty and heriot service, and the tenant alien part of the tenancy to a person other than the lord himself, the heriot service will be multiplied, and the alienee will hold by a distinct heriot service (*i*). If after such alienation the lord acquire the part so severed, the heriot service on that part alone will be extinguished, and the heriots due in respect of the remaining part or parts will remain unaffected (*k*).

Multiplication.

Extinguishment.

91. Heriot custom is founded solely on the custom of the manor. It must therefore have originated prior to the Statute of "Quia Emptores" (*l*), and is not an incident of tenure (*m*). It is regulated entirely by the custom prevailing in the manor, and is due because the tenant was at his death or alienation a tenant of the manor (*m*), whether he had an estate of inheritance, or for life, or for years (*m*), or at will (*n*), not because he was then seised of any particular tenement within the manor (*o*). So if a heriot be due by custom from every tenant dying seised, the lord need not allege of what estate the tenant died seised (*p*).

Heriot custom.

92. Heriot custom can only be claimed upon the death of, or alienation or surrender by, a tenant of the manor (*q*). Special custom or an express or presumed reservation must be proved to support a claim for a heriot on alienation (*r*); and if the heriot is payable on alienation, it is payable by the alienor (*s*). Heriot custom, being against common right, will be construed very strictly (*t*).

When heriot custom can be claimed.

Where by the custom of the manor the lord may grant lands to three persons to hold *successivé* (that is, in the order in which they are named in the grant, and not otherwise) for their lives, and the lord grants to a person and his assigns to hold to him for his own life and the lives of two others, the grant, though not strictly according to the custom, is good so far as it is a grant to such person for his life, and on his death the lord may have a heriot. But as the *cestuis que vie* never were his tenants, the lord cannot have a heriot on their deaths (*u*).

Tenancy essential.

93. A heriot may be due by custom on the death of a tenant seised in fee simple of freehold lands held of a manor (*x*). A mortgagor in possession of customary freeholds is not so seised thereof

Seisin of tenant.

(*i*) 4 Bac. Abr. tit. Heriot, B, p. 208; and see pp. 42, 43, *post*.
(*k*) *Ibid.*
(*l*) 18 Edw. 1, c. 1 (1290).
(*m*) Bro. Abr. tit. Heriot, p. 1; and see p. 37, *ante*.
(*n*) *Hix* v. *Gardiner* (1614), 2 Bulst. 195.
(*o*) Watkins on Copyholds, Vol. II., p. 101.
(*p*) 4 Bac. Abr. tit. Heriot, C, p. 213.
(*q*) Watkins on Copyholds, Vol. II., p. 109; *Parker* v. *Combleford* (1599), Cro. Eliz. 725.
(*r*) *Ibid.*, p. 117; Kitchin on Courts Leet, 2nd ed. (1653), pp. 133 a, b, 134 b, 135 b.
(*s*) 4 Bac. Abr. tit. Heriot, B, 208, 209; 14 Vin. Abr. tit. Heriot, 296.
(*t*) *Holloway* v. *Berkeley* (1826), 6 B. & C. 2.
(*u*) 4 Bac. Abr. tit. Heriot, B, p. 207; *Smartle* v. *Penhallow* (1703), 2 Ld. Raym. 994.
(*x*) *Damerell* v. *Protheroe* (1847), 10 Q. B. 20.

SECT. 1. The Lord's Rights.

that on his death the lord is entitled to claim his best beast pursuant to the custom of the manor (*a*).

A custom that the lord shall have a heriot of every stranger, that is, any person other than a tenant of the manor, dying within the manor is bad (*b*).

Remedy of lord for heriot custom.

94. As a general rule, the lord can only seize for a heriot custom (*c*), but by special custom he may distrain also (*d*). For heriot custom the lord may seize wherever the heriot can be found, as well out of the manor as in it (*e*); but where the special custom authorises him to distrain, the distress must be within the manor (*f*).

Special custom.

A custom to distrain the cattle of a stranger for a heriot is a good custom, because the distress is only a pledge and means to gain the heriot (*g*). The lord cannot prescribe to distrain for a heriot custom if it be eloigned (*h*), for the lord may have his action against the person who eloigned it (*i*). A custom that, if the tenant essoign (*k*) his beast before the lord can seize it, the lord may seize the beast of another person on the land, is unreasonable and therefore bad (*l*).

Apportionment.

95. Where a heriot is due by the custom of the manor upon the death of the tenant, and the lord purchases a part of a tenancy, the heriot custom is not extinguished as to the residue, because the tenant thereof is still within the lord's homage and tenant of the manor, and therefore on his death the lord may have his heriot (*m*).

Heriots due only in respect of tenancy.

96. The rights of the lord, in respect of both freeholds and copyholds held of the manor, must be asserted against, and only against, a person who is, at common law, the tenant of the lord. If a trustee is admitted tenant of copyhold land, he, and not the beneficiary for whom he is trustee, becomes liable to the incidents of tenure. So, if a mortgagee of copyholds by conditional surrender is admitted under the surrender, he thereupon becomes the lord's tenant. The same consequence follows if a mortgagee of freeholds held of a manor takes a mortgage in fee which does not require the consent of the lord, although the mortgagor remains in possession of the tenement. In each of the above cases a heriot will be due on the death of the tenant or legal owner only (*n*).

(*a*) *Copestake* v. *Hoper*, [1908] 2 Ch. 10, C. A.
(*b*) 4 Bac. Abr. tit. Heriot, B, p. 206.
(*c*) 14 Vin. Abr. tit. Heriot, p. 299.
(*d*) Watkins on Copyholds, Vol. II., p. 128; *Rogers* v. *Birkmire* (1736), Lee *temp.* Hard. 245; *Hungerford* v. *Haviland* (1626), 3 Bulst. 323, *per* CREW, C.J., at p. 325. As to enforcing payment of a heriot by action for debt, see p. 59, *post*.
(*e*) *Western* v. *Bailey*, [1897] 1 Q. B. 86, C. A., *per* Lord ESHER, M.R., at p. 89.
(*f*) 4 Bac. Abr. tit. Heriot, C, p. 212.
(*g*) 14 Vin. Abr. tit. Heriot, p. 301, n.
(*h*) See note (*e*), p. 38, *ante*.
(*i*) 14 Vin. Abr. tit. Heriot, p. 298.
(*k*) That is, make some excuse for not delivering the beast to the lord.
(*l*) 4 Bac. Abr. tit. Heriot, B, p. 206.
(*m*) *Ibid.*, p. 208; see *Chapman* v. *Pendleton* (1609), 2 Brownl. 293. As to heriot service, see p. 38, *ante*.
(*n*) *Copestake* v. *Hoper*, *supra*, at p. 17.

A heriot may be due from a tenant who is a mesne lord, for although the land itself is held of him by his tenant, yet he himself is tenant to his superior lord (*o*).

Alienation.

97. A heriot on alienation can only accrue on the actual relinquishment or cession of the tenancy (*p*). As regards freeholds, a heriot cannot be due on the gift or grant of a particular interest of the freeholder, but only on his alienation in fee simple, because in that case alone would the tenancy of the lord be altered or relinquished (*q*).

In the case of copyholds a heriot custom on alienation will be due on the surrender of a particular copyhold or interest, however small, because on such surrender the portion or estate surrendered is no longer part of the original tenancy (*r*).

Surrenderee not tenant before admittance.

If a copyholder surrender to the use of another and die before the surrenderee is admitted, the surrenderor being tenant to the lord at his death, a heriot will be due on his death, and not on the death of the surrenderee, who before admittance would not be tenant to the lord (*a*).

Bankruptcy.

Where a copyholder for life became bankrupt, and his copyhold was assigned for the benefit of his creditors, under the then existing bankruptcy law, this transmutation of tenant by Act of Parliament was thought not to prejudice the lord, so that the lord ought to be entitled to his heriot on the death of the bankrupt rather than on the death of the assignee (*b*).

Dower and curtesy.

98. In the case of freeholds a heriot custom will be due on the death of a tenant by the curtesy, for he is tenant of the lord. But in the case of a dowress it is different, for the heir is tenant to the lord and responsible to him for the services, and the dowress is tenant to the heir, so that on her death no heriot will be due. But in the case of copyholds a heriot will be due on the death of a tenant by the curtesy and on the death of a woman entitled to freebench where she takes the whole estate; and where she takes by assignment in respect of her freebench a portion less than the whole estate, it is probable, but not certain, that a heriot would also be due on her death (*c*).

Escheat.

99. The lord will not be deprived of his heriot upon the death of the tenant by reason of the fact that the same death causes the land

(*o*) Watkins on Copyholds, Vol. II., p. 110; *Lanyon* v. *Carne* (1669), 2 Saund. 165. As to mesne lords, see p. 3, *ante*.

(*p*) Watkins on Copyholds, Vol. II., p. 117.

(*q*) *Ibid.*, p. 117. So where a tenant seised in fee made a feoffment to the use of himself and his wife and the heirs of their two bodies, with remainder to the right heirs of himself, a heriot was payable on his death because the ancient use of the reversion was never out of him (*Butler* v. *Archer* (1594), Owen, 152).

(*r*) Watkins on Copyholds, Vol. II., p. 118.

(*a*) *Ibid.*, p. 110; Kitchin on Courts Leet, 2nd ed. (1653), p. 135 a.

(*b*) 4 Bac. Abr. tit. Heriot, B, p. 208. This *dictum* was not required for the decision in the case, and its soundness has been doubted; see *Smartle* v. *Penhallow* (1703), 2 Ld. Raym. 994. The point does not appear to have arisen since.

(*c*) Watkins on Copyholds, Vol. II., p. 115..

SECT. 1. The Lord's Rights.

to escheat to the lord for want of an heir. The lord will still be entitled to have his heriot out of the goods of the deceased tenant (*d*). Where freehold lands subject to heriot service escheat to the lord, the heriot service will thereafter be absolutely extinguished; but in the case of heriot custom, and where the lands are copyhold which the lord has power to regrant by copy of court roll, a heriot may be made payable again on such regrant (*e*).

No heriot on death of *cestui que trust.*

100. Since a heriot is due to the lord on his tenant dying solely seised, it follows that, if trustees have been admitted to copyhold tenements, so long as one of the trustees is tenant on the court roll no heriot is due to the lord, and the heriot will accrue on the death of the last surviving trustee, and not on the death of the *cestui que trust* (*f*).

Seisin.

101. If a tenant die disseised, yet, as he nevertheless continued after disseisin to be tenant to the lord by right, a heriot will be due on his death, and not on the death of the disseisor (*g*), and if the custom require that the tenant die seised, seisin in law will be sufficient (*h*). But no heriot will be due on the death of a person having a mere *interesse termini* (*i*), or of a married woman (*k*), or of a husband in the lifetime of his wife where both were seised in her right (*l*).

Several tenements, several heriots.

102. Where the lord may have the best beast as a heriot of him that dies tenant, and the tenant holds two several tenements of the lord subject to the custom, the lord shall have the two best beasts (*m*). According to the custom of some manors, only one heriot is due though the tenant dies seised of several tenements (*n*).

Multiplication of heriots.

103. Heriots, whether heriot service or heriot custom, will be multiplied in two cases, one where the tenement is actually divided and converted into two or more separate tenements, and

(*d*) *Basingstoke Corporation* v. *Bolton* (*Lord*) (1852), 1 Drew. 291.

(*e*) Watkins on Copyholds, Vol. II., p. 122; Kitchin on Courts Leet, 2nd ed. (1653), p. 134 b; *Talbot's Case* (1610), 8 Co. Rep. 104 b; *Chapman* v. *Pendleton* (1609), 2 Brownl. 293.

(*f*) *Trinity College, Cambridge* v. *Browne* (1686), 1 Vern. 441; 4 Bac. Abr. tit. Heriot, B, p. 207; Scriven on Copyholds, p. 250.

(*g*) Watkins on Copyholds, Vol. II., p. 110; 2 Roll. Abr. tit. Heriots, 2; Kitchin on Courts Leet, 2nd ed. (1653), p. 134 a. It is stated by Watkins to be doubtful whether and to what extent the rule stated in the text above applies to a copyholder; but see *Norris* v. *Norris* (1639, 2 Roll. Abr. 72; 1 Cru. Dig. 304.

(*h*) Co. Litt. 239 b; Watkins on Copyholds, Vol. II., p. 110; and see *Copestake* v. *Hoper*, [1908] 2 Ch. 10, C. A.

(*i*) Watkins on Copyholds, Vol. II., p. 114; *Lanyon* v. *Carne* (1669), 2 Wms. Saund. 485.

(*k*) *Ibid.* But *quære* as to the effect of the Married Women's Property Acts, 1881 to 1907; see p. 66, *post.*

(*l*) *Wirly* v. *Pemberton* (1708), 2 Eq. Cas. Abr. 279; *Montague* (*Lord*) v. *Dudman* (1751), 2 Ves. Sen. 396; 4 Bac. Abr. tit. Heriot, B, p. 207.

(*m*) 4 Bac. Abr. tit. Heriot, B, p. 206.

(*n*) As, for instance, in the manors of Mayfield and Framfield, in Sussex (4 Bac. Abr. tit. Heriot, B, p. 208), and of Huntingdon English, in Herefordshire (*Price* v. *Woodhouse* (1849), 3 Exch. 616).

the other where the tenement is left entire, but different persons have distinct undivided estates therein.

Thus where a single tenement, liable to a single heriot, is physically divided into two portions, and each portion is held by different persons, the lord will be entitled to receive a whole heriot on the death of, or alienation by, either, as the case may be (*o*).

Tenants in common.

So where a single tenement is devised or surrendered to the use of two or more persons as tenants in common who take admittance, the lord will be entitled to an entire heriot on the death of, or alienation by, any one or more of such tenants (*p*), for each is solely seised for a several estate (*q*). But upon a reunion of the several estates one heriot only will be subsequently payable (*r*).

Joint tenants.

Joint tenants being only one and the same tenant in law, the lord cannot have a heriot service or, in the absence of special custom, a heriot custom until the death of the last survivor of them all (*s*). In the case of lands held by several in coparcenary the rule has been stated to be that no heriot will be due in respect thereof until the alienation by, or death of, the ultimate survivor, when a single heriot will be payable (*t*).

Nature of heriot.

104. The chattel to be paid to the lord for a heriot may be either animate or inanimate; but, whichever it be, it must belong to the tenant at the period by reference to which it is due, *e.g.*, the time of the death of, or alienation by, the tenant, and if it must be the best of its kind, it must be that which is best at that moment (*a*). The right to determine which is the best chattel is with the lord or his steward, but where the chattel need not be the best, the person liable to pay may select the chattel, provided it be of the right kind (*b*). If the lord makes his selection he must abide by his choice, whether it ultimately appear that the beast selected was in fact the best beast or not (*c*).

When property in heriot passes.

105. Both in the case of heriot service and heriot custom, on the happening of the event on which the heriot becomes due the property in the beast, as soon as it is ascertained, passes at once to the lord of the manor. It is not necessary that he should seize it to vest the property in him; it would be sufficient, for instance, if he had previously marked it or identified it by description (*d*).

Where the lord is entitled to a fixed number of the best beasts

(*o*) *Parker* v. *South Eastern Rail. Co.* (1853), 1 W. R. 316 (by custom); but see *Kingsmill* v. *Bull* (1808), 9 East, 185; and see p. 39, *ante*.

(*p*) *Holloway* v. *Berkeley* (1826), 6 B. & C. 2.

(*q*) Watkins on Copyholds, Vol. II., p. 113.

(*r*) *Garland* v. *Jekyll* (1824), 2 Bing. 273, approved in *Holloway* v. *Berkeley*, *supra*, where *Attree* v. *Scutt* (1805), 6 East, 476, was not followed.

(*s*) 14 Vin. Abr. tit. Heriot, p. 297; *Padwick* v. *Tyndale* (1858), 1 E. & E. 184.

(*t*) Watkins on Copyholds, Vol. II., p. 112; but see *Garland* v. *Jekyll*, *supra*, where a heriot seems to have been demanded on the death of the first of two coparceners.

(*a*) Watkins on Copyholds, Vol. II., p. 106; Bro. Abr. tit. Hariott, 8; Kitchin on Courts Leet, 2nd ed. (1653), pp. 135 b, 136 a; *Shaw* v. *Taylor* (1616), Hut. 4.

(*b*) *Odiham* v. *Smith* (1592), Cro. Eliz. 589.

(*c*) Watkins on Copyholds, Vol. II., pp. 105, 106.

(*d*) *Western* v. *Bailey*, [1897] 1 Q. B. 86, C. A., *per* Lord ESHER, M.R., at p. 89.

SECT. 1. The Lord's Rights.

for heriot, and his bailiff claims and marks more than the fixed number of beasts, but leaves them in the possession of the tenant, the seizure is bad (*e*).

Mode of claim.

106. Where a heriot custom is claimed, it is not sufficient to claim generally, or for the best beast generally; but the claim must be "for a heriot" or "in the name of a heriot" (*f*). The lord may declare for two heriots after two descents in one and the same declaration when it is for one and the same seignory (*g*).

Remedy where no heriot.

107. If the heriot be a beast and if there be no beast belonging to the tenant at the time of his death or alienation, then, unless the absence was due to fraud, the lord cannot have his heriot (*h*). Similarly the lord cannot have a chattel real or a thing in action where there are no personal chattels (*i*). But by custom the lord may take the best inanimate chattel in default of there being a beast for a heriot, and a definite sum of money in default of there being a beast or an inanimate chattel, or he may choose which he will have of all three (*k*); but the custom in each case must be strictly proved (*l*).

A custom to the effect that the amount of a money payment in lieu of a heriot shall be assessed by the homage is bad, because the members of the homage are interested persons and themselves liable to pay a sum similarly assessed (*m*).

Seizure of heriot.

108. Seizure of a heriot may be made on behalf of the lord by his steward, bailiff, or other officer of the manor, or apparently by any specially authorised person (*n*), but it must be peaceable (*o*).

Heriot is not rent.

109. It is doubtful (*p*) whether heriot service is rent within the meaning of the statute (*q*) which gives to a landlord for rent due priority to an execution creditor (*r*), and notwithstanding the definition of rent in the interpretation clause in the Real Property Limitation Act, 1833 (*s*), a heriot, being a right to take a specific chattel, arising either upon death or alienation, and not of a continuous nature, but becoming due at uncertain intervals, is not within ss. 2 and 3 of that Act, and the right to seize a heriot is not a right

(*e*) *Abington* v. *Lipscomb* (1841), 1 Q. B. 776.
(*f*) Watkins on Copyholds, Vol. II., p. 129; *Parton* v. *Mason* (1561), 2 Dyer, 199 b; *Parkin* v. *Radcliffe* (1798), 1 Bos. & P. 282.
(*g*) 14 Vin. Abr. tit. Heriot, p. 301.
(*h*) Watkins on Copyholds, Vol. II., p. 130; stat. 13 Eliz. c. 5.
(*i*) Watkins on Copyholds, Vol. II., p. 107; 2 Bl. Com. 424.
(*k*) Watkins on Copyholds, Vol. II., p. 108; and see *Croom* v. *Guise* (1837), 4 Bing. (N. C.) 148. As to enforcing payment of heriot by action for debt, see p. 59, *post*.
(*l*) Watkins on Copyholds, Vol. II., p. 107; and see *Adderley* v. *Hart* (1718), noted in *Parkin* v. *Radcliffe* (1799), 1 Bos. & P. 282, 394.
(*m*) *Parkin* v. *Radcliffe*, *supra*.
(*n*) Watkins on Copyholds, Vol. II., p. 127; Termes de la Ley, tit. Hariott; Fitzherbert's Abridgment, tit. Harriott, 5.
(*o*) Watkins on Copyholds, Vol, II., p. 126.
(*p*) *Ibid.*, p. 129.
(*q*) 8 Ann. c. 18 (in Ruffhead's edition c. 14), ss. 1, 6, 7 (1709).
(*r*) See title DISTRESS.
(*s*) 3 & 4 Will. 4, c. 27, s. 1; see title LIMITATION OF ACTIONS.

to make an entry or distress or to bring an action within the meaning of those sections, and consequently a lord will not be debarred of his heriot because for more than twenty years the lord of the manor has neglected to take a heriot (*t*).

Enfranchisement.

110. The right to take a heriot may be extinguished by enfranchisement under s. 2 of the Copyhold Act, 1894, the method of enfranchisement being similar to that required for the enfranchisement of copyholds (*a*).

The lord will not be entitled to any heriot, or compensation therefor, by reason of the death of the tenant between the commencement and completion of proceedings for enfranchisement under the Copyhold Act, 1894 (*b*). But where lands subject to heriot are taken under the Lands Clauses Consolidation Act, 1845, and the tenant dies before enfranchisement under that Act, a heriot due on such death will be payable (*c*).

SUB-SECT. 5.—*Reliefs.*

Nature of a relief.

111. A relief is a sum of money, usually fixed at a year's rent (*d*), payable to the lord by a freeholder upon his accession by descent to the land of which his ancestor died tenant of the manor (*e*). By special custom a copyholder may be compelled to pay a relief (*e*).

A relief cannot be apportioned, so that on the death of a coparcener the heir cannot be required to pay a relief (*f*). As to whether a relief may be multiplied there is no satisfactory authority (*g*).

Classification.

Where a tenant dies between the commencement and completion of proceedings for enfranchisement under the Copyhold Act, 1894, no relief will be payable in consequence of such death (*h*).

112. Reliefs are divided into two classes: (1) reliefs proper and (2) reliefs improper (*i*).

(1) Reliefs proper.

113. Reliefs proper are those which are payable as of common right without special contract. They are payable only upon descent, and not upon alienation (*i*). Hence upon escheat there can be no relief, because there is no heir (*i*). The lord may distrain for a relief proper without a custom to distrain (*i*).

(*t*) *Zouche* (*Lord*) v. *Dalbiac* (1875), L. R. 10 Exch. 172; see also *Owen* v. *De Beauvoir* (1847), 16 M. & W. 547, *per* PARKE, B., at p. 566, affirmed (1850) 5 Exch. 166, Ex. Ch.; *Chichester* v. *Hall* (1851), 17 L. T. (o. s.) 121.

(*a*) 57 & 58 Vict. c. 46.

(*b*) *Ibid.*, s. 49.

(*c*) 8 & 9 Vict. c. 18, s. 95; and see *Leconfield* (*Lord*) v. *London and North Western Rail. Co.*, [1907] 1 Ch. 38.

(*d*) Watkins on Copyholds, Vol. I., p. 288.

(*e*) *Ibid.*, Vol. II., p. 99; Coke, The Compleat Copy-holder (1673), s. 25; Fitzherbert's Abridgment, tit. Harriott, pl. 6.

(*f*) Case 30 (1566), 3 Leon. 13.

(*g*) In Scriven on Copyholds, p. 243, it is stated that a relief cannot be multiplied; but *Holland* v. *Lancaster* (1690), 2 Vent. 134, there referred to as the authority for the statement, was not a case of relief, but of fine on alienation.

(*h*) 57 & 58 Vict. c. 46, s. 49.

(*i*) *Basingstoke Corporation* v. *Bolton* (*Lord*) (1854), 3 Drew. 58, 59.

SECT. 1. The Lord's Rights. (2) Reliefs improper.

114. Reliefs improper are divided into two classes: (1) relief by custom and (2) relief by special reservation (*j*). As regards reliefs by custom, the lord must prove the custom, and, if he wish to distrain, he must prove also a custom to distrain (*j*). As regards reliefs by special reservation, it would seem they may be reserved upon alienation as well as upon death; and the lord may distrain without a custom to distrain (*j*).

SUB-SECT. 6.—*Quit-rents, Rents of Assize, and other Services.*

Quit-rent.

115. A quit-rent, often called a rent of assize, is a perpetual annual payment due by custom from the tenant to the lord in lieu of certain services which have been commuted from time immemorial (*k*). It is an incident of tenure which must have been created before the Statute of "Quia Emptores" (*l*), and cannot be varied or altered in any way (*k*), though it may be extinguished by enfranchisement under s. 2 of the Copyhold Act, 1894 (*m*). Where rents have been paid to the lord of a manor for a long series of years without any variation, the payment of them, though no evidence of a title to the land, affords a presumption that they are quit-rents (*n*).

A quit-rent, payable in respect of a copyhold tenement, is within the Real Property Limitation Acts, 1833 and 1874 (*o*), and will become extinguished if unpaid for upwards of twelve years and there has been no acknowledgment thereof given during that time (*p*). A rent may be severed from a manor (*q*).

Services.

116. Formerly there were other services by which a manorial tenant held his land (*r*), which have fallen into disuse and are now practically extinct (*s*). A copyholder must do suit of court and perform the services by which he holds (*t*). And where land held subject to services is divided, the services will be multiplied (*a*).

SUB-SECT. 7.—*Forfeiture for Waste, Alienation, and Crime.*

Kinds of forfeiture.

117. The relationship between the tenant and the lord with regard to forfeiture is fixed by custom and law, and does not depend on the will of the lord (*b*).

(*j*) *Basingstoke Corporation* v. *Bolton* (*Lord*) (1854), 3 Drew. 58, 59.

(*k*) *Howitt* v. *Harrington* (*Earl*), [1893] 2 Ch. 497; *Bradshaw* v. *Lawson* (1791), 4 Term Rep. 443 (services generally); and see *Foljambe* v. *Smith's Tadcaster Brewery Co.* (1904), 73 L. J. (CH.) 722.

(*l*) 18 Edw. 1, c. 1 (1290).

(*m*) 57 & 58 Vict. c. 46.

(*n*) *Doe* d. *Whittick* v. *Johnson* (1819), Gow, 173. Quit-rents payable by freeholders are often called chief rents.

(*o*) 3 & 4 Will. 4, c. 27; 37 & 38 Vict. c. 57.

(*p*) *Howitt* v. *Harrington* (*Earl*), [1893] 2 Ch. 497; and see *Foljambe* v. *Smith's Tadcaster Brewery Co.*, *supra*.

(*q*) *Steward* v. *Bridger* (1705), 2 Vern. 516; and see *Searle* v. *Cooke* (1890), 43 Ch. D. 519, C. A., *per* KAY, J., at p. 526.

(*r*) Such, for instance, as ploughing the lord's land, reaping his corn, and the like.

(*s*) Scriven on Copyholds, p. 237.

(*t*) Watkins on Copyholds, Vol. II., pp. 23, 26 a, 135. As to suit of court, see p. 13, *ante*.

(*a*) 2 Roll. Abr. p. 514 c, tit. Services.

(*b*) Watkins on Copyholds, Vol. I., p. 386.

There are two kinds of forfeiture, namely,—

(1) Absolute, the effect of which is to destroy the tenancy for ever and all claim of the tenant to emblements (*c*);

(2) Optional, the effect of which is to suspend the tenancy until the tenant shall obey the lord. This is in the nature of a process rather than a penalty, and is usually called seizure *quousque* (*d*).

Where a copyholder takes upon himself to convey to another the freehold of his tenement, the lord will be entitled to an absolute forfeiture of the tenement (*e*); but where a copyholder grants a lease contrary to the custom of the manor it is good against everyone but the lord, and it is not void as against him, but only a ground for an optional forfeiture (*f*). In such a case the lessee may bring ejectment against a third party (*g*).

Duty of tenant to maintain boundaries.

118. It is the duty of the tenant to keep the boundaries of his copyhold tenement, for he is in possession, and if the boundaries are lost, negligence cannot be imputed to the lord. Hence where the copyhold land has become confused with other lands, the lord may claim a forfeiture (*h*). But, in cases where all parties do not consent to invoke the powers of the Board of Agriculture and Fisheries hereafter mentioned, the usual course is for the lord to demand a commission to ascertain and set out by metes and bounds the boundaries of such copyhold land, and if the boundaries cannot be ascertained, the commission may be directed to set out such a quantity of land in the possession of the tenant and within the manor as may be equal in value to such copyhold land (*i*); and although after copyholds have been enfranchised this obligation ceases for the future, yet enfranchisement will not relieve the tenant of the duty which he neglected to perform prior to or at the time of enfranchisement (*k*).

Where a lord brings an action against a tenant for neglect to maintain the boundaries of his copyhold tenement he must waive any claim for forfeiture he may have against the tenant (*l*).

Power of Board of Agriculture and Fisheries to define boundaries.

Where any copyhold or customary land is intermixed, or held, or occupied together with land of freehold tenure, or with copyhold or customary land held of another manor, or under other customs or titles, and such copyhold or customary land cannot be identified by the description thereof on the rolls of the manor, and the situation or boundaries of such freehold and copyhold or customary land respectively are unknown or unascertained, the Board of Agriculture and Fisheries may, upon the application in

(*c*) Watkins on Copyholds, Vol. I., p. 408.

(*d*) *Ibid.*, p. 397; and see p. 57, *post*.

(*e*) *Doe* d. *Bover* v. *Trueman* (1831), 1 B. & Ad. 736.

(*f*) *Doe* d. *Robinson* v. *Bousfield* (1844), 6 Q. B. 492; but see *Smith* v. *Packhurst* (1742), 3 Atk. 141 (void against lord).

(*g*) *Doe* d. *Tresidder* v. *Tresidder* (1841), 1 Q. B. 416.

(*h*) See *Durham* (*Bishop*) v. *Rippon* (1825), 4 L. J. (o. s.) (CH.) 32.

(*i*) *Leeds* (*Duke*) v. *Strafford* (*Earl*) (1798), 4 Ves. 180; and see *Tear* v. *Taylor* (1859), 1 F. & F. 480; and title BOUNDARIES AND FENCES, Vol. III., pp. 114 *et seq.*

(*k*) *Searle* v. *Cooke* (1890), 43 Ch. D. 519, C. A.

(*l*) *Durham* (*Bishop*) v. *Rippon*, *supra*.

SECT. 1. The Lord's Rights.

writing of the persons interested in such lands, and with the consent of the lord or lords of the manor or respective manors of which such lands are holden, authorise some fit person to award and declare what part of the lands so intermixed, or held, or occupied together, are or shall be deemed to be copyhold or customary land and freehold land respectively or are respectively held of each such manor or under each of such customs or titles respectively, or to determine and declare the situation and boundary thereof, as the case may require (*m*).

Duty to repair.

119. It is the duty of a copyholder, as a common incident to all copyhold tenure, to keep his tenement in repair, and if he fails to repair his tenement, he is liable to incur a forfeiture; but as against this liability he has a right by general law, apart from custom, to take botes and estovers to enable him to fulfil his obligation (*n*).

If a custom is proved, by accepting the tenancy according to the custom, a contractual obligation to repair will be inferred on the part of the tenant; and on his death the lord may have an action for breach of the contract against the legal personal representative of a deceased tenant who has committed a breach of this obligation (*o*). But unless the custom can be proved, there is no contractual obligation on the tenant, and the lord is confined to his remedy by way of forfeiture (*p*). If a building has fallen into a ruinous condition, but is rebuilt or repaired within a reasonable time, and before being required by the lord to be repaired, the lord will not be entitled to seize for a forfeiture (*q*). A mortgagee may pull down ruinous buildings and rebuild better in order to avoid a forfeiture (*r*).

Waste.

120. Where a tenant commits voluntary waste involving damage to the inheritance, he will be liable to forfeiture at the option of the lord, but not if there be no damage (*s*). So if, in the absence of custom, a copyholder fells timber (*t*) on his tenement otherwise than for necessary botes and estovers, or digs for mines, or takes over and above his customary allowance for his own private use turf for fuel or marl for manure (*a*), or if he abates an

(*m*) Inclosure Act, 1846 (9 & 10 Vict. c. 70), s. 6, amending the Inclosure Act, 1845 (8 & 9 Vict. c. 118). The commissioners appointed under the latter Act were abolished, and their duties transferred to the Board of Agriculture and Fisheries, by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), and the Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31); see title BOUNDARIES AND FENCES, Vol. III., p. 112.

(*n*) Watkins on Copyholds, Vol. I., p. 398; *Ashmead* v. *Ranger* (1700), 1 Ld. Raym. 551; see also *Cox* v. *Higford* (1710), 1 Eq. Cas. Abr. 121; *Galbraith* v. *Poynton*, [1905] 2 K. B. 258, *per* BIGHAM, J., at p. 265; and p. 25, *ante*; and see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 467.

(*o*) *Blackmore* v. *White*, [1899] 1 Q. B. 293.

(*p*) *Galbraith* v. *Poynton*, *supra*.

(*q*) *R.* v. *Dare* (1861), 2 F. & F. 355.

(*r*) *Hardy* v. *Reeves* (1799), 4 Ves. 479 a.

(*s*) *Doe* d. *Grubb* v. *Burlington* (*Earl*) (1833), 5 B. & Ad. 507; *R.* v. *Dare*, *supra*; *Ashmead* v. *Ranger*, *supra*; *Mardiner* v. *Elliot* (1788), 2 Term Rep. 746; Watkins on Copyholds, Vol. I., p. 398; Co. Litt. 63 a; Coke, The Compleat Copy-holder (1673), s. 57; *Eastcourt* v. *Weeks* (1698), 1 Salk. 186.

(*t*) Watkins on Copyholds, Vol. I., p. 399; *Nash* v. *Derby* (*Earl*) (1705), 2 Vern. 537.

(*a*) Watkins on Copyholds, Vol. I., p. 404; Gilbert on Tenures, p. 425.

ancient inclosure, or makes a new inclosure, or alters or removes his lord's landmarks (*b*), or if he neglects to perform or render the services due to his lord, or refuses to be sworn on the homage or to make a presentment on oath, or refuses to attend court or do suit of court without reasonable excuse after a summons to attend has been served upon him personally, or refuses to pay a reasonable fine upon admittance, the tenant will be liable to a forfeiture of his tenement at the option of the lord (*c*). But if there be a genuine dispute between the tenant and his lord as to the title to or amount of the fine, non-payment by the tenant will not render him liable to forfeiture (*d*). Again, if a copyholder wilfully damages the court rolls or forges a customary, so that the lord is damaged, it is said that he will be liable to a forfeiture of his tenancy (*e*).

Liability of lunatics and infants etc. to forfeiture.

121. A person of unsound mind, an idiot, a lunatic, or an infant is in no case liable to incur a forfeiture (*f*), and the act of a guardian will not work a forfeiture of his ward's lands (*g*). A married woman married before the 1st January, 1883, is not liable to incur a forfeiture of copyholds her title to which accrued before that date, unless the act causing it be done with the consent of her husband (*h*). On the other hand, such a married woman may suffer forfeiture if her husband, seised in her right, commits waste or does anything tending to disinheritance of the lord, or if he refuses to perform his services in respect of his wife's tenement (*i*).

Convicts.

The conviction and attainder in cases of treason or felony by the tenant will not now involve forfeiture of the tenant's estate (*j*), but a judgment of outlawry in treason or felony still involves forfeiture. Proceedings in outlawry, however, may be said to be obsolete (*k*).

Act of stranger.

122. The act of a stranger can in no case lead to a forfeiture, unless done with the consent of the copyhold tenant (*l*).

(*b*) Watkins on Copyholds, Vol. I., p. 405. As to confusion of boundaries by neglect of tenant to preserve them, see *Searle* v. *Cook* (1890), 43 Ch. D. 519, C. A., and p. 47, *ante*.

(*c*) Watkins on Copyholds, Vol. I., pp. 396, 397 ; Coke, The Compleat Copyholder (1673), s. 57.

(*d*) Watkins on Copyholds, Vol. I., p. 397 ; *Barnes* v. *Corke* (1691), 3 Lev. 308.

(*e*) Watkins on Copyholds, Vol. I., p. 407 ; Coke, The Compleat Copy-holder (1673), s. 57 ; *Taverner* v. *Cromwell* (1584), 3 Leon. 107.

(*f*) Watkins on Copyholds, Vol. I., p. 410. By Infants' Property Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 65), s. 5, the lord may appoint an attorney for an infant and admit the infant by such attorney; and s. 9 provides that no forfeiture shall be incurred by an infant not appearing or omitting to pay any fine ; but this section does not affect the lord's right of entry and seizure *quousque* (*Dimes* v. *Grand Junction Canal Co.* (1846), 9 Q. B. 469 ; (1852) 3 H. L. Cas. 794) ; and see p. 81, *post*.

(*g*) Watkins on Copyholds, Vol. I., p. 411 ; Coke, The Compleat Copy-holder (1673), s. 59.

(*h*) Watkins on Copyholds, Vol. I., p. 410.

(*i*) Watkins on Copyholds, Vol. I., p. 411 ; *Clifton* v. *Molineux* (1585), 4 Co. Rep. 27 a ; *Hedd* v. *Chalener* (1589), Cro. Eliz. 149 ; but now under s. 1 of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), a married woman may hold and dispose of real estate as her separate property in the same manner as if she were a single woman ; see title HUSBAND AND WIFE.

(*j*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 1.

(*k*) See title CRIMINAL LAW AND PROCEDURE. Outlawry in civil proceedings was abolished by the Civil Procedure Repeals Act, 1879 (42 & 43 Vict. c. 59), s. 3.

(*l*) See note (*g*), *supra*.

SECT. 1. The Lord's Rights.

Since 1850 the act or omission of a trustee of copyholds cannot work a forfeiture so as to deprive the *cestui que trust* of his beneficial interest in the copyhold estate (*m*). But where a man is admitted tenant for life with remainder, under another copy of court roll, to another person upon the death or forfeiture of the tenant for life's estate, the lord is entitled to enter for a forfeiture of the life estate for waste committed by the tenant for life in cutting down trees, because otherwise the tenant for life and remainderman, by combining together, might strip the land of all the timber (*n*); but if by the custom of the manor copyholders of inheritance may cut timber, the lord cannot enter for a forfeiture on the ground that a tenant for life has committed waste by cutting timber (*o*).

Effect of forfeiture.

123. If a tenant incur a forfeiture, it will operate only as to the particular tenement in respect of which it was incurred (*p*), but will not necessarily destroy a right of common appurtenant to a copyhold tenement (*q*), and will only operate to the extent of the estate or interest of the tenant incurring it, so that remaindermen and reversioners will not be damaged by forfeiture on the part of a particular tenant in possession (*r*); nor will a lessee of the copyholder be affected, unless the lease itself be the cause of forfeiture (*s*).

When lord may enter for forfeiture.

124. The lord is entitled to enter for a forfeiture absolute, unless by the express terms of his grant he is precluded from so doing (*t*); as, for instance, where the lord has made a grant upon the determination of an existing estate, the lord must give effect to this grant in favour of the grantee; but even in that case he may enter for an optional forfeiture (*u*).

To avail himself of a forfeiture which has accrued during his lordship, the lord may be lord for the time being or a grantee or lessee of the seignorial rights (*w*), and a lord tenant in remainder or reversion may claim in respect of a forfeiture committed immediately before his interest fell into possession (*x*); but the heir or devisee of a lord can only claim for an absolute forfeiture incurred in the lifetime of his ancestor or testator (*x*). If, however, the

(*m*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 46. This section was repealed by the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 51, but the effect of the earlier enactment is preserved by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38 (2).

(*n*) *Doe* d. *Folkes* v. *Clements* (1813), 2 M. & S. 68.

(*o*) *Denn* d. *Joddrell* v. *Johnson* (1808), 10 East, 266.

(*p*) Watkins on Copyholds, Vol. I., p. 407; *Taverner* v. *Cromwell* (1584), 4 Co. Rep. 27 a; but see *Peachey* v. *Somerset* (*Duke*) (1721), 1 Stra. 454.

(*q*) *Badger* v. *Ford* (1819), 3 B. & Ald. 153; see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 523, 529.

(*r*) Watkins on Copyholds, Vol. I., p. 408; 1 Roll. Abr. 509; Coke, The Compleat Copy-holder (1673), s. 59; and see *Roe* d. *Jeffereys* v. *Hicks* (1754), 2 Wils. 13.

(*s*) Watkins on Copyholds, Vol. I., p. 408; 2 Roll. Rep. 372.

(*t*) Watkins on Copyholds, Vol. I., p. 412; *Benson* v. *Strode* (1680), 2 Show. 150; affirmed *sub nom. Strode* v. *Dennison* (1682), 3 Lev. 94, Ex. Ch.

(*u*) *Doe* d. *Folkes* v. *Clements*, *supra*.

(*w*) Watkins on Copyholds, Vol. I., p. 413; and see *Doe* d. *Bover* v. *Truman* (1831), 1 B. & Ad. 736.

(*x*) Watkins on Copyholds, Vol. I., p. 414, and *Doe d. Bover* v. *Truman*, *supra*; but see *Montague's* (*Lady*) *Case* (1612), Cro. Jac. 301.

manor is vested in a corporation sole—as where it is appendant to a parsonage, rectory, or bishopric, and forfeiture occurs during a vacancy—the successor may take advantage of it (*a*).

Where a manor is held in coparcenary, all the coparceners must act together in taking advantage of a forfeiture (*a*).

If there is a custom that a forfeiture shall be presented by the homage, the lord cannot take advantage of it until presentment has been made (*b*), unless the cause of forfeiture is so apparent and notorious that no presentment can be necessary (*b*). For presentment is not requisite to complete the lord's right to take as forfeit, but to inform the lord (*c*).

A lord cannot claim as forfeit if the custom provides for a fine as the lord's remedy (*d*).

Effect of licence.

125. The lord cannot enter for a forfeiture if the act of the tenant has been done under licence from him (*e*). But a licence by a lord having a limited interest in the manor, *e.g.*, as tenant thereof for life or years, will not afford any protection to the licensee for acts done under it after the determination of the lord's interest (*f*).

Waiver.

126. Where a forfeiture is such that it operates automatically as a defeasance or termination of the tenant's estate, as in the case of attempted conveyance of the fee simple by the tenant, the lord cannot waive the forfeiture, but must make a regrant if he wishes to replace the tenant in his former position (*g*). If, however, the forfeiture is optional or capable of being met by payment of compensation by the offending tenant, the lord may, if he is aware of the forfeiture, waive the forfeiture. In this case waiver by the lord will not operate as a new grant, but as an admission by the lord that the tenant remains in of his old title (*h*).

Where the lord is aware that an optional forfeiture has been incurred by his tenant or person having a right to become tenant, and thereafter does any considered act which may amount to a recognition of the tenant or person as remaining or being his tenant by his old title, such act will amount to a waiver by the lord of the forfeiture (*i*). Thus, where a surrenderee ought, by custom confirmed by statute, to take admittance within a fixed time from the surrender, and the lord admits him upon such surrender after the customary period, the forfeiture is waived by such admittance (*k*).

(*a*) Watkins on Copyholds, Vol. I., p. 415; and see *Eastcourt* v. *Weeks* (1698), 1 Salk. 186.

(*b*) Watkins on Copyholds, Vol. I., p. 416; Coke, The Compleat Copy-holder (1673), s. 57.

(*c*) Watkins on Copyholds, Vol. I., p. 417.

(*d*) *Paston* v. *Utbert* (1629), Litt. 264, 267; also reported *sub nom. Paston* v. *Manne*, Het. 5.

(*e*) *Clarke* v. *Arden* (1855), 16 C. B. 227. As to licence, see pp. 52 *et seq.*, *post*.

(*f*) Watkins on Copyholds, Vol. II., p. 88; Gilbert on Tenures, p. 389.

(*g*) Watkins on Copyholds, Vol. I., pp. 420, 421; and *Doe* d. *Tarrant* v. *Hellier* (1789), 3 Term Rep. 162; and see *Milfax* v. *Baker* (1662), 1 Lev. 26.

(*h*) *Doe* d. *Tarrant* v. *Hellier*, *supra*.

(*i*) *Ibid.*

(*k*) *Doe* d. *Warwick* v. *Coombes* (1844), 6 Q. B. 535.

SECT. 1. The Lord's Rights.

Entry for forfeiture.

127. It would seem that a forfeited estate will not vest in the lord until entry or some step taken by him (*l*). In availing himself of a forfeiture, the lord must proceed with the strictest regularity (*m*), and in the case of an absolute forfeiture must enter within the statutory period after the forfeiture has been incurred or he will be for ever barred from entering in respect of the particular forfeiture (*n*).

Effect of action for declaration of rights.

128. Where the lord has taken proceedings against a tenant for a forfeiture, and in consequence thereof other tenants of the manor commence an action against the lord asking for a declaration as to the customary rights of the tenants, the lord will not upon an interlocutory application by the plaintiffs in the action, of whom the defendant in the proceedings by the lord is one, be restrained from prosecuting such proceedings or from taking any other proceedings against any other tenants of the manor as for forfeiture (*o*).

Relief against forfeiture.

129. The court can relieve against forfeiture for waste (*p*).

SUB-SECT. 8.—*Licence.*

Licence.

130. A licence is a special authority granted by the lord to his tenant to enable the tenant to do that which, but for the licence, would render the tenant liable to forfeiture at the hands of the lord who grants such licence; apart from statutory enactments (*q*) such licence is only good as against the lord personally or persons claiming through and under him to the extent of his interest (*r*), so that if the act authorised by a lord having a limited interest, *e.g.*, as tenant for life, causes damage to the inheritance, the licensee may be restrained from acting on the licence by the lord in remainder (*s*).

Statutory authority to grant licences

But all the powers to authorise and to grant leases contained in the Settled Estates Act, 1877, include respectively powers to authorise the lords of settled manors and powers to the lords of settled manors to give licences to their copyhold or customary tenants to grant leases of lands held by them of such manors to the same extent and for the same purposes as leases may be authorised or granted of

(*l*) *Doe* d. *Evans* v. *Evans* (1826), 5 B. & C. 584.

(*m*) *Doe* d. *Tarrant* v. *Hellier* (1789), 3 Term Rep. 162.

(*n*) *Whitton* v. *Peacock* (1834), 3 My. & K. 325. This period is now twelve years under the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), ss. 1, 9; see title LIMITATION OF ACTIONS.

(*o*) *Sefton* (*Lord*) v. *Salisbury* (*Lord*) (1859), 7 W. R. 272 (right to dig marl, gravel etc.).

(*p*) *Cox* v. *Higford* (1710), 1 Eq. Cas. Abr. 121 (non-repair); *Nash* v. *Derby* (*Earl*) (1705), 2 Vern. 537 (felling timber); but see *contra*, *Peachey* v. *Somerset* (*Duke*) (1721), 1 Stra. 446.

(*q*) As, for instance, Settled Estates Act, 1877 (40 & 41 Vict. c. 18); Settled Land Act, 1882 (45 & 46 Vict. c. 38); Copyhold Act, 1894 (57 & 58 Vict. c. 46).

(*r*) Watkins on Copyholds, Vol. II., p. 87; as, for example, licence to demise for years, or to fell timber, or to exchange (*Carlisle* (*Earl*) v. *Armstrong* (1757), 1 Burr. 333). For forms of licence, see Encyclopædia of Forms, Vol. V., pp. 226 *et seq.*

(*s*) Watkins on Copyholds, Vol. II., p. 89; *Wentworth* v. *Turner* (1795), 3 Ves. 3.

freehold hereditaments under the Act (*t*). Similarly, under the Settled Land Act, 1882 (*a*), a tenant for life as lord of the manor may grant to a tenant of copyhold or customary land, parcel of the manor comprised in the settlement, a licence to make any such lease of that land or of a specified part thereof as the tenant for life is by the Act empowered to make of freehold land.

Such a licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments, and must be entered on the court rolls of the manor, and a certificate in writing by the steward, deputy steward, or other proper officer of the manor is sufficient evidence of such entry (*b*).

Again, under the Copyhold Act, 1894 (*c*), a lord may, notwithstanding any custom to the contrary, grant a licence, which must be in writing and entered on the court rolls (*d*), to a tenant to alienate his ancient tenement or any part thereof by demise, sale, exchange, or mortgage, and either together or in parcels, and in such a case the lord may apportion the yearly customary rent payable for the whole tenement, and the parcel so alienated shall be subject to its apportioned part of rent, and be held of the lord in all respects, and be conveyed in like manner, as the original tenement.

Licence to commit waste.

A lord impeachable for waste cannot grant a licence to commit waste unless there is a fixed fine by custom payable upon the granting of such a licence (*e*), and a licence granted by a lord who has no title to be lord is not good against the rightful lord (*f*).

Nature of licence.

131. A licence confers no estate upon the licensee, but operates merely as a dispensation with the rights of the lord (*g*), the benefit of which may be assigned without further licence (*h*), unless a restriction upon assignment is imposed by the original licence.

Operation of licence.

132. Where a copyholder has made a lease of his tenement for years with the licence of the lord, the licence operates as a confirmation by the lord, so that the lease will remain good for all purposes notwithstanding that the copyholder should incur a forfeiture before its expiration (*i*). But if a copyholder leases for years without the licence of the lord or the authority of custom, the lessee has nevertheless a good title against all the world but the lord (*k*).

The terms of a licence must be strictly observed (*l*), though full

(*t*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 9. As to settlements generally, see title SETTLEMENTS.
(*a*) 45 & 46 Vict. c. 38, s. 14.
(*b*) *Ibid.*, and s. 2 (10) (vi.).
(*c*) 57 & 58 Vict. c. 46, s. 86.
(*d*) *Ibid.*, s. 86 (4).
(*e*) *R.* v. *Hale* (1838), 1 Per. & Dav. 293.
(*f*) Watkins on Copyholds, Vol. II., p. 88; *Milfax* v. *Baker* (1661), 1 Lev. 26.
(*g*) Watkins on Copyholds, Vol. II., p. 93; *Haddon* v. *Arrowsmith* (1596), Cro. Eliz. 461.
(*h*) Watkins on Copyholds, Vol. II., p. 94; at least as to a term created by licence (*ibid.*).
(*i*) *Clarke* v. *Arden* (1855), 16 C. B. 227.
(*k*) *Doe* d. *Tresiddcr* v. *Tresidder* (1841), 1 Q. B. 416.
(*l*) Watkins on Copyholds, Vol. II., p. 91; *Neale* v. *Jackson* (1594), Cro. Eliz. 395; *Haddon* v. *Arrowsmith*, *supra*.

SECT. 1. The Lord's Rights.

advantage need not necessarily be taken of it (*m*). It may be given on a condition precedent, but not upon a condition subsequent (*n*).

Lord's discretion

133. Apart from custom, the granting or refusing of a licence is a matter wholly in the lord's discretion, and the lord will not be compelled to grant a licence even though a custom be alleged that in such a case the lord should receive an annual payment for such licence (*o*). But if the lord has contracted to grant a licence, the court will grant specific performance of it (*p*). In a proper case, where there is evidence to support it, the court will presume the grant of a licence by the lord (*q*); but where such a presumption has been made the lord may revoke the licence at any time afterwards by act *in pais* or by parol (*r*).

Steward's authority.

134. The steward of a manor cannot, by virtue of his office as steward, grant a licence to demise even in full court and in the name of the lord, unless he has special authority from the lord, or there is a special custom enabling him to do so. The lord, however, may ratify and confirm a licence given without authority by the steward (*s*).

The steward cannot give a licence under the Copyhold Act, 1894 (*t*), unless he has express written authority from the lord.

SUB-SECT. 9.—*Escheat.*

Escheat.

135. Where a tenant of a manor in fee, remainder, or reversion, and whether of customary freehold or copyhold lands, dies intestate without leaving an heir, so that they pass to the lord, not by purchase nor by descent, but to him as lord of the manor (*u*), the lands are said to escheat, or fall to the lord (*w*), who, if he is a mesne lord, must enter or bring an action for recovery of possession to complete his title (*a*). Escheat differs from forfeiture in that it cannot take effect during the life of a tenant, but only on death for want of an heir (*w*). No confession, verdict, inquest, conviction, or judgment of or for any treason, or felony, or *felo de se* of a tenant will now cause any escheat (*b*) of such tenant's lands; but in some cases his lands theoretically may still escheat to the lord

(*m*) Watkins on Copyholds, Vol. II., p. 92; *Worledge* v. *Benbury* (1617), Cro. Jac. 436.

(*n*) Watkins on Copyholds, Vol. II., p. 93; *Haddon* v. *Arrowsmith* (1596), Cro. Eliz. 461.

(*o*) *R.* v. *Hale* (1838), 9 Ad. & El. 339. For an instance of a custom whereby a tenant on payment of ten years' rent might demand of the lord a licence to grant a lease, see Watkins on Copyholds, Vol. II., p. 94.

(*p*) Watkins on Copyholds, Vol. II., p. 94; *Hungerford* v. *Austen* (1650), Nels. 49.

(*q*) *Doe* d. *Foley* v. *Wilson* (1809), 11 East, 56.

(*r*) *Doe* d. *Beck* v. *Heakin* (1837), 6 Ad. & El. 495.

(*s*) Watkins on Copyholds, Vol. II., p. 90; Coke, The Compleat Copy-holder (1673), s. 44; Gilbert on Tenures, p. 433. But see *contra*, Kitchin on Courts Leet, 2nd ed. (1653), p. 85.

(*t*) 57 & 58 Vict. c. 46, s. 86 (5); and see p. 62, *post*.

(*u*) Co. Litt. 13 a, 18 b, note (2).

(*w*) Co. Litt. 13 a. As to escheat generally, see title DESCENT AND DISTRIBUTION.

(*a*) Cru. Dig. tit. 30, pl. 9. The writ of escheat there mentioned was abolished by the Real Property Limitation Act, 1833 (3 & 4 Vict. c. 27), s. 36; and see R. S. C., Ord. 18, r. 2.

(*b*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 1.

upon his being adjudged an outlaw (*c*). And the lord's claim will not be defeated by reason of a disposition of the lands by the tenant during the proceedings culminating in his outlawry (*d*).

Death of mortgagor.

136. If a tenant dies without an heir after having surrendered his tenement to a mortgagee for a term of years, the lord will be entitled by escheat to the reversion and, as *tanquam heres* and *quasi*-assign, to the benefit of the equity of redemption of the term (*e*). Where copyholds were surrendered to a mortgagee, but the surrender was expressed to be absolute, and not conditional, and there was nothing upon the court rolls or otherwise to affect the lord or the steward with notice that there was a condition attached to the surrender, the lord was entitled to enter for an escheat upon the death without heirs of the mortgagee (*f*). But now such copyholds would be subject to the statutory power of the High Court to make an order vesting the mortgaged land in such person or persons in such manner and for such estates as the court may direct (*g*).

Death of trustee.

137. Where the tenant, being a sole trustee, dies without an heir, there will be no escheat to the lord, because the beneficiaries under the trust may apply to the High Court for an order vesting his estate in a new trustee (*h*). Should, however, the trusts upon which the tenant upon the court rolls holds fail ultimately by reason of the death intestate and without an heir of the person beneficially entitled under the trust, the lord will be entitled to take by escheat, as though the estates or interests so failing were legal estates or interests, the trustee having no right against the lord's interest (*i*).

Power of appointment or licence.

138. If the tenant has given a power of appointment or a power of sale over his tenement to another prior to his death without an heir, the lord will take by escheat subject to the power being exercised by the donee thereof (*k*). Again, if prior to the death of the tenant the lord has granted him a licence which would otherwise continue to be effectual after his death, the lord cannot claim escheat in derogation of the licence (*l*).

Effect of escheat.

139. When copyholds escheat, the copyhold tenure and all estates, and interests, and customs founded only on that tenure are determined, and the land becomes and remains reannexed to the manor and passes with it until granted out again to be held by

(*c*) As to outlawry being practically obsolete, see p. 49, *ante*.
(*d*) Co. Litt. 13 a, b.
(*e*) *Downe* (*Viscount*) v. *Morris* (1844), 3 Hare, 394.
(*f*) *A.-G.* v. *Leeds* (*Duke*) (1833), 2 My. & K. 343.
(*g*) Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 29, 50, 51.
(*h*) *Ibid.*, s. 26 (5), re-enacting Trustee Act, 1850 (13 & 14 Vict. c. 66), s. 15; see also *Re Godfrey's Trusts* (1883), 23 Ch. D. 205.
(*i*) Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), ss. 4, 7. For cases decided prior to this Act coming into force, see *Henchman* v. *A.-G.* (1834), 3 My. & K. 485; *Gallard* v. *Hawkins* (1884), 27 Ch. D. 298.
(*k*) *Manning* v. *Andrews* (1576), 1 Leon. 260.
(*l*) Watkins on Copyholds, Vol. II., p. 89; *Turner* v. *Hodges* (1628), Hut. 101; but see *Petty* v. *Evans* (1610), 2 Brownl. 40. As to acts of the lord amounting to waiver of an escheat, see *Doe* d. *Tarrant* v. *Hellier* (1789), 3 Term Rep. 162, at p. 171.

SECT. 1. The Lord's Rights.

copy of court roll or otherwise, as may be allowed by the custom (*m*). When copyholds or customary lands escheat to the lord, he takes them subject to any liability there may be upon them for payment of the debts of the deceased tenant (*n*); but otherwise he takes them freed from any conditions attached thereto to which he or his predecessors were not privy (*o*).

The lord may defer regranting escheated copyhold lands to be held by copy of court roll as long as he pleases (*p*), provided that meanwhile he does not dispose of them for any common law interest so as to work a severance (*q*).

Effect of enfranchisement.

140. On a common law enfranchisement of copyholds the lord cannot reserve to himself any right of escheat (*r*). But where enfranchisement is made under the Copyhold Act, 1894 (*s*), the lord is entitled, in the case of an escheat for want of heirs, to the same right as he would have had if the land had not been enfranchised.

Right of Crown.

141. Copyholds cannot escheat to the Crown unless the Crown is the lord of the manor (*t*).

SECT. 2.—*The Lord's Remedies.*

SUB-SECT. 1.—*Seizure.*

Modes of seizure.

142. The right of the lord to make a seizure in respect of a tenement held of the manor may be considered under two heads, namely, (1) seizure absolute and (2) seizure *quousque*.

A general and undefined seizure will be held to be an absolute seizure, unless it is expressly stated at the time to be qualified (*a*); and where there is a special custom as to seizure the lord must be careful to proceed with the greatest regularity. For instance, if he attempt to seize absolutely by reason of the last tenant's heir not coming in to take admittance, and there be no special custom enabling him to seize absolutely on such a ground, the seizure will be totally bad (*a*).

(1) Seizure absolute.

143. An absolute seizure is not so much a remedy as an overt act on the part of the lord demonstrating a fact which has already taken effect in law. Thus, where a tenant has incurred a forfeiture in consequence of an attempt on his part to convey away the absolute fee simple in his copyhold tenement, the forfeiture takes effect completely on the commission by the tenant of the act giving

(*m*) *Delacherois* v. *Delacherois* (1864), 11 H. L. Cas. 62. As to the effect of escheat on heriots, see p. 41, *ante*.

(*n*) *Evans* v. *Brown* (1842), 5 Beav. 114.

(*o*) Watkins on Copyholds, Vol. I., p. 277; *Burgess* v. *Wheate* (1759), 1 Eden, 177; and see *A.-G.* v. *Leeds* (*Duke*) (1833), 2 My. & K. 343.

(*p*) Watkins on Copyholds, Vol. I., p. 53.

(*q*) *Re London and South Western Railway Exeter Extension Act*, 1856, *Ex parte Henley* (*Lord*) (1860), 29 Beav. 311.

(*r*) Watkins on Copyholds, Vol. I., pp. 449. 450; *Townley* v. *Gibson* (1788), 2 Term Rep. 701.

(*s*) 57 & 58 Vict. c. 46, s. 21 (1) (b).

(*t*) *Walker* v. *Denne* (1793), 2 Ves. 170.

(*a*) *Doe* d. *Tarrant* v. *Hellier* (1789), 3 Term Rep. 162. For form of precept to seize on forfeiture, and of return to the precept, see Encyclopædia of Forms, Vol. V., p. 200; and for form of entry of return on the court rolls, *ibid.*, p. 201.

rise to it; and the seizure of the forfeited tenement is merely a physical consequence of the forfeiture, not a perfecting of it (*b*).

(2) Seizure *quousque*.

144. As its name implies, seizure *quousque* is not intended to be an absolute seizure. It is a recognised process by which the lord is enabled to enforce his rights against the tenant, or person whom the lord has a right to require to take admittance as tenant. Seizure *quousque* never involves forfeiture (*c*). Where, owing to the death of or surrender by the former tenant, there is no tenant on the court rolls, and the person having the right to admittance refuses to come in to take admittance, or where the new tenant has been admitted but refuses to pay the fine due upon admittance, the lord may seize *quousque*, that is to say, until the tenant comes in to take admittance or, being admitted, pays the fine (*c*). The lord cannot bring an action against a copyholder to compel him to come in (*d*).

Extent of lord's right.

145. The lord may seize *quousque* in respect of a share in a copyhold estate, or in respect of a limited interest, such as a life estate or an estate in remainder (*e*); and he may avail himself of a right to seize *quousque* which arose in the time of his predecessor (*f*). But where a customary heir has tendered himself for admittance, the lord cannot refuse him and seize *quousque* for want of a tenant on the ground that certain devisees who do not claim the property ought to be admitted in his stead (*g*); and if a devisee in fee, subject to a term of years in others, has been admitted and paid the full fine, the lord cannot seize *quousque* on the ground that the termors had a prior right to admittance (*h*).

Where one of several surrenderees who are trustees seeks admittance, the lord cannot seize *quousque* on the ground that all must come in (*i*); and if, on the death of a tenant, a receiver of the rents and profits of his copyhold tenement has been appointed by the High Court at the instance of creditors and legatees of the deceased tenant's estate, the lord cannot seize *quousque* for want of a tenant without the leave of the court (*k*).

Proclamations.

146. As a general rule, and independently of custom, it is necessary that three proclamations be made at three consecutive courts in order to entitle the lord to seize *quousque* (*l*). But by special custom the lord may seize immediately upon the expiration of a year and a day from the death of the last tenant; and the three proclamations, if required, may by special custom be made either at one court or at three general courts held on the same day

(*b*) *Doe* d. *Bover* v. *Trueman* (1831), 1 B. & Ad. 736; but see *Doe* d. *Evans* v. *Evans* (1826), 5 B. & C. 584.
(*c*) *Doe* d. *Twinning* v. *Muscott* (1844), 12 M. & W. 832; *Dimes* v. *Grand Junction Canal Co.* (1846), 9 Q. B. 469, Ex. Ch. (infants).
(*d*) *Clayton* v. *Cookes* (1742), 2 Atk. 449.
(*e*) Watkins on Copyholds, Vol. I., p. 291.
(*f*) *Doe* d. *Bover* v. *Trueman*, *supra*.
(*g*) *Garland* v. *Mead* (1871), L. R. 6 Q. B. 441.
(*h*) *Everingham* v. *Ivatt* (1873), L. R. 8 Q. B. 388, C. A.
(*i*) *Roe* d. *Ashton* v. *Hutton* (1763), 2 Wils. 162; and see p. 103, *post*.
(*k*) *Evelyn* v. *Lewis* (1844), 3 Hare, 472.
(*l*) *Doe* d. *Bover* v. *Trueman*, *supra*.

SECT. 2. The Lord's Remedies.

or on successive days (*m*). If, after three proclamations, the heir should fail to come in and take admittance, the lord can only seize *quousque*, and not absolutely, unless warranted in so doing by custom (*n*), for seizure *quousque* makes no difference to the right of the heir and gives the lord no adverse title against him (*o*).

Effect of the Real Property Limitation Acts.

147. The right of the lord to seize *quousque* is a right of entry within the meaning of the Real Property Limitation Act, 1833 (*p*), but, for the purposes of that Act and the Real Property Limitation Act, 1874 (*q*), the right does not accrue to the lord until the tenant has refused to come in after three proclamations have been duly made or special notice to come in has been duly served upon him (*r*).

Waiver.

148. Where by the custom of the manor, confirmed by statute, a surrenderee ought to come within three years after presentment of the surrender to take admittance, the custom, being for the benefit of the lord only, may be waived by him so as to render valid an admittance made after that period (*s*).

Liability of the lord to account for profits.

149. A lord who seizes *quousque* is not liable to account for the rents and profits of the copyhold estate received by him during his possession (*a*).

Effect of seizure on right of common.

150. If the lord seize upon forfeiture a copyhold tenement to which a right of common over the waste of the manor is appurtenant, the right of common will not necessarily be destroyed, but will attach to the tenement upon a regrant by the lord of the tenement if the grant includes the appurtenances (*b*).

SUB-SECT. 2.—*Distress.*

Distress.

151. Where quit-rents or rents of assize are due to the lord he may distrain (*c*). So he may distrain for neglect of fealty (*d*)

(*m*) Watkins on Copyholds, Vol. II., p. 77; see *King* v. *Dilliston* (1688), 3 Mod. Rep. 221.

(*n*) *Doe* d. *Tarrant* v. *Hellier* (1789), 3 Term Rep. 162. For form of precept to seize *quousque*, see Encyclopædia of Forms, Vol. V., p. 199; for form of return to the precept, *ibid.*, p. 200; and for form of entry of return on the court rolls, *ibid.*, p. 201.

(*o*) *Doe* d. *Le Keux* v. *Harrison* (1844), 6 Q. B. 631.

(*p*) 3 & 4 Will. 4, c. 27, s. 2; *Re Lidiard and Jackson's and Broadley's Contract* (1889), 42 Ch. D. 254.

(*q*) 37 & 38 Vict. c. 57; see, generally, title LIMITATION OF ACTIONS.

(*r*) *Ecclesiastical Commissioners for England* v. *Parr*, [1894] 2 Q. B. 420, C. A. Thus, where there had been no admittance between 1786 and 1876, but in the latter year, in consequence of two proclamations, the person in possession requested to be admitted, but the matter was allowed to drop until 1891, when a further request for admittance was made, it was held, in an action commenced in 1894, that the lord's right to seize *quousque* had not arisen for the purposes of the Real Property Limitation Acts, 1833 and 1874 (3 & 4 Will. 4, c. 27; 37 & 38 Vict. c. 57), inasmuch as there had not then been either three proclamations or special notice to the heir to come in followed by a refusal so to do (*Beighton* v. *Beighton* (1895), 73 L. T. 86).

(*s*) *Doe* d. *Warwick* v. *Coombes* (1844), 6 Q. B. 535.

(*a*) *Underhill* v. *Kelsey* (1610), Cro. Jac. 226.

(*b*) *Badger* v. *Ford* (1819), 3 B. & Ald. 153; and see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 529.

(*c*) *North* v. *Strafford* (*Earl*) (1732), 3 P. Wms. 149; see also stat. 4 Geo. 2, c. 28, s. 5. As to distress generally, see title DISTRESS.

(*d*) *Crawley* v. *Kingsmill* (1618), Noy, 24.

and suit of court (*e*). But in the case of amercements (*i.e.*, penalties payable in money) the lord cannot distrain except by prescription (*f*). Reliefs other than reliefs by custom may be distrained for. Reliefs by custom can be distrained for if a special custom to distrain be proved (*g*). So a heriot service and, where there is a special custom to distrain, a heriot custom may be distrained for by the lord (*g*).

Compensation for enfranchisement.

152. If copyholds have been enfranchised under the Copyhold Act, 1894, and the compensation or consideration money is imposed as a rentcharge upon the land, it may be distrained for (*h*). So, if the compensation be by way of certificate of charge, the owner of the certificate may distrain for any sum in the nature of interest or periodical payment due under the certificate (*i*).

In both cases the remedies provided by the Conveyancing and Law of Property Act, 1881 (*k*), are also available.

SUB-SECT. 3.—*Action for Debt.*

Action for debt.

153. Arrears of fines, quit-rents, rents of assize, or reliefs which are due to the lord or to the estate of a deceased lord, may be recovered by action for debt (*l*) as well as by distress (*m*). For non-payment of heriot custom, where no custom to distrain can be proved, the lord's remedy is by action for debt where it is a payment in the nature of rent (*n*), otherwise by action for trover or detinue. So in the case of relief by custom where there is no custom to distrain, the lord has an action for debt (*n*). A fine may be recovered from an admitted tenant by action for debt (*m*).

Part III.—Officers of the Manor.

SECT. 1.—*The Lord's Steward.*

SUB-SECT. 1.—*Nature of his Office.*

Nature of steward's office.

154. The steward is a constituent and essential part of the court baron proper, and not merely a ministerial officer (*o*); but although he is a judicial officer (*p*), the mouthpiece of the court

(*e*) *Rivet* v. *Dowe* (1610), Noy, 135 (services generally); *Thornhagh* v. *Hartshorn* (1727), Bunb. 237.

(*f*) *Pell* v. *Towers* (1618), Noy, 20.

(*g*) *Basingstoke Corporation* v. *Bolton* (*Lord*) (1854), 3 Drew. 50; but in the case of reliefs the distress cannot be sold (Watkins on Copyholds, Vol. II., p. 128); see pp. 38, 40, *ante*.

(*h*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 27 (e).

(*i*) *Ibid.*, s. 41 (7).

(*k*) 44 & 45 Vict. c. 41, s. 44; see *Searle* v. *Cooke* (1890), 43 Ch. D. 519, C. A.; and title RENTCHARGES AND ANNUITIES.

(*l*) Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 1; and see also *Shuttleworth* v. *Garnet* (1689), 3 Lev. 261; *Thomas* v. *Sylvester* (1873), L. R. 8 Q. B. 368.

(*m*) *North* v. *Strafford* (*Earl*) (1732), 3 P. Wms. 149, *per* Lord KING, C., at p. 151 (quit-rent); and see *Thomas* v. *Sylvester*, *supra* (rentcharge); *Pertwee* v. *Townsend*, [1896] 2 Q. B., *per* COLLINS, J., at p. 132.

(*n*) *Basingstoke Corporation* v. *Bolton* (*Lord*), *supra*; see p. 44, *ante*.

(*o*) *Holroyd* v. *Breare* (1819), 2 B. & Ald. 473; and see *Bradley* v. *Carr* (1841), 3 Scott (N. R.), 521; and see p. 11, *ante*.

(*p*) *Re Jennings*, [1903] 1 Ch. 906.

SECT. 1. The Lord's Steward.

baron proper, the freeholders, and not the steward, are the judges in it (*q*).

Although the steward is, in a sense, the servant of the lord, yet the rights of the lord are to some extent qualified by those of the steward (*r*), for instance with regard to the custody of court rolls (*s*). Notice to, or knowledge of, the steward is not necessarily constructive notice to, or knowledge of, the lord (*t*).

The steward is not responsible for the acts of the regular bailiff of the manor; but if other bailiffs are specially selected by the party suing out execution to act in a particular case, and the steward takes an indemnity to protect himself in case of misconduct of the bailiffs or otherwise identifies himself with the bailiffs, he will be held responsible for their acts (*u*).

The office of steward is said to be a hereditament (*a*).

SUB-SECT. 2.—*Appointment.*

Right to appoint.

155. The right to grant a stewardship goes with the legal estate in the manor, irrespective of the quantity of that estate. Hence the mortgagee of a manor is the proper person to appoint the steward, though he should, if possible, obtain the consent of the owner of the equity of redemption to the appointment (*b*). So where there is a guardian, but the legal estate is in trustees, the latter should appoint on the nomination of the guardian (*c*).

Duration of office.

156. The lord may appoint to the office of steward for the life of the steward, so as to make the appointment continue valid after the death of the appointor, without the aid of any custom or Act of Parliament (*d*), in which case the appointment will not be revoked by the descent or alienation of the manor (*e*). So the appointment may be made to hold for a term of years, or to commence *in futuro*, or by custom in reversion, or to be held by two persons jointly; but in all these cases the appointment must be made by deed (*f*).

Mode of appointment and forfeiture of office.

157. A steward may be appointed by parol (*g*), but if so, he is merely a steward at will, and his office may be determined at any time (*f*). In royal manors the appointment of steward must be made by patent (*h*); and if a corporation is lord the appointment of steward must be by deed (*i*). In every case where the appointment

(*q*) See p. 11, *ante*.
(*r*) *Re Jennings*, [1903] 1 Ch. 906.
(*s*) *Ibid.*
(*t*) *Peachey* v. *Somerset* (*Duke*) (1721), 1 Stra. 446.
(*u*) *Bradley* v. *Carr* (1841), 3 Scott (N. R.), 521; and see p. 65, *post*.
(*a*) Challis on Real Property, 2nd ed., pp. 45, 46.
(*b*) Watkins on Copyholds, Vol. II., p. 17.
(*c*) *Mott* v. *Buxton* (1802), 7 Ves. 201.
(*d*) *Bartlett* v. *Downes* (1825), 3 B. & C. 616.
(*e*) Watkins on Copyholds, Vol. II., p. 19.
(*f*) *Ibid.*, p. 17. For forms of appointment, see Encyclopædia of Forms, Vol. V., pp. 182 *et seq.*
(*g*) *Bridger* v. *Huett* (1860), 2 F. & F. 35.
(*h*) Coke, The Compleat Copy-holder (1673), s. 45; *Down* v. *Hopkins* (1594), 4 Co. Rep. 29 b; *Holcroft's* (*Lady*) *Case* (1594), 4 Co. Rep. 30 b.
(*i*) Watkins on Copyholds, Vol. II., p. 18; Coke, The Compleat Copy-holder (1673), s. 45.

is made by deed the appointee holds upon good behaviour (*k*). Thus he may forfeit his office if he abuse it (*e.g.*, by taking a bribe), or neglect to perform his duties to the injury of the lord (*e.g.*, neglect to hold the usual courts), or if he refuse to do his duty after having been requested to do it by the lord, even though the lord suffer no injury in consequence (*l*).

Removal.

158. Where a steward has been appointed, and all parties concerned have acquiesced in it, the court will not set aside the appointment without good cause shown (*m*). If a steward be wrongly removed from his office, he may obtain restoration by mandamus in the High Court (*l*).

If he be unduly molested, his remedy formerly was by action on the case (*n*), but now it is by action for injunction and damages.

SUB-SECT. 3.—*Powers and Duties of the Steward.*

Authority.

159. The whole authority of the steward (*o*) is derived from the lord, for he represents the lord, and, in the absence of the lord, he presides as judge in the customary court to punish offences and redress injuries (*p*). He collects and declares the opinions of the suitors (*q*). If there are joint stewards, a court may be held by one of them alone (*r*).

Powers.

160. A steward *de jure* may grant lands which have escheated without special authority from the lord, but not against the express desire of the lord (*s*).

Where the lord may grant land to hold by copy of court roll or by any customary tenure, the grant may be made out of the manor and without holding a court by the steward or deputy steward, provided that where, by the custom of the manor, the lord is authorised, with the consent of the homage, to grant any common or waste lands to hold by copy of court roll, the grant must not be made without the consent of the homage assembled at a customary court (*t*).

The steward or his deputy may make a valid admittance to land of copyhold or customary tenure without holding a court and without a presentment by the homage of the surrender, instrument, or fact in pursuance of which the admittance is made (*u*).

(*k*) Watkins on Copyholds, Vol. II., p. 18.

(*l*) *Ibid.*, p. 19 ; *Ile's Case* (1671), 1 Vent. 153.

(*m*) *Mott* v. *Buxton* (1802), 7 Ves. 201.

(*n*) Watkins on Copyholds, Vol. II., p. 19 ; *Mountague* (*Earl*) v. *Preston* (*Lord*) (1690), 2 Vent. 170 ; *Whitechurch* v. *Pagett* (1662), 1 Sid. 74 ; *Ferrer* v. *Johnson* (1594), Cro. Eliz. 336.

(*o*) As to the position of the steward in relation to enfranchisement, see p. 117, *post*.

(*p*) Watkins on Copyholds, Vol. II., p. 18 ; Coke, The Compleat Copy-holder (1673), s. 45.

(*q*) *Brown* v. *Gill* (1846), 2 C. B. 861.

(*r*) Watkins on Copyholds, Vol. II., p. 22 ; *Knowles* v. *Luce* (1580), Moore (K. B.), 109.

(*s*) Watkins on Copyholds, Vol. II., p. 17 ; Coke, The Compleat Copy-holder (1673), s. 45 ; *Harris* v. *Jay* (1594), 4 Co. Rep. 30 a.

(*t*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 83.

(*u*) *Ibid.*, s. 84 (1). As to the law on this point before the Act, see *Doe* d. *Gutteridge* v. *Sowerby* (1860), 2 L. T. 150 ; and see *Ecclesiastical Commissioners* v. *Parr*, [1894] 2 Q. B. 420, *per* Lord ESHER, M.R., at p. 429.

SECT. 1. The Lord's Steward.

The steward need not have express written authority from the lord to demand a fine upon admittance (*a*).

Notwithstanding any custom to the contrary, the steward may, but only with the written authority of the lord, grant a licence to a tenant to alienate his ancient tenement or any part thereof by devise, sale, exchange, or mortgage, and either together or in parcels, and in the last case to apportion the rent (*b*).

The steward has power to examine a woman married prior to the 1st January, 1883, as to her voluntary consent to the execution by her of any deed affecting her property (*c*).

Deputy steward.

161. The steward may appoint a deputy (*d*) to act for him, and the deputy may appoint a sub-deputy to act for him for a particular occasion (*e*).

De facto steward.

162. A purely ministerial act within the scope of a steward's powers will be good even though the steward who performs such act be an infant, *non compos mentis*, an idiot, a lunatic, or an outlaw (*f*), unless, in the case of an infant, he be of such tender years as to be lacking in discretion (*g*). Again, a person who is not the steward of a manor may by custom take surrenders of copyholds of the manor, although he has no authority to do so except the custom, and although the steward is also in the habit of taking surrenders (*h*).

Generally if a person has no real authority to act as steward, but exhibits every indication of having such authority, or has the reputation of having such authority, his ministerial acts in court will be valid and indisputable. But such a person cannot make a voluntary grant without real authority (*i*). No act of a mere stranger without the least colour of authority will be good (*k*).

Duty to make entry on court rolls.

163. Where a deed of conveyance of copyhold or customary lands operating under the Settled Land Act, 1882, is tendered to the steward for entry on the court rolls, it is the duty of the steward to make such entry (*l*).

(*a*) Watkins on Copyholds, Vol. I., p. 380 ; *Trotter* v. *Blake* (1677), 2 Mod. Rep. 229.

(*b*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 86 (1), (3), and (5) ; and see p. 54, *ante*.

(*c*) Watkins on Copyholds, Vol. II., p. 17 ; *Smithson* v. *Cage* (1619), Cro. Jac. 526 ; *Erish* v. *Rives* (1599), Cro. Eliz. 717. As to the execution of deeds by married women, see, further, p. 96, *post*.

(*d*) *Bridger* v. *Huett* (1860), 2 F. & F. 35. For form of appointment, see Encyclopædia of Forms, Vol. V., p. 184.

(*e*) Watkins on Copyholds, Vol. II., p. 22 ; *Knowles* v. *Luce* (1580), Moore (K. B.), 109 ; *Davie's (Lord) Case* (1584), 1 Leon. 288 ; *Parker* v. *Kett* (1701), 1 Salk. 95. But it is doubtful whether this can be done without special authority from the lord or special custom.

(*f*) Watkins on Copyholds, Vol. II., p. 18 ; *Scambler's Case* (1598), Cro. Eliz. 636 ; Coke, The Compleat Copy-holder (1673), s. 45 ; but see *contra*, Co. Litt. 3 b.

(*g*) *Eddleston* v. *Collins* (1852), 10 Hare, 99.

(*h*) *Doe* d. *Stilwell* v. *Mellersh* (1836), 5 Ad. & El. 540.

(*i*) Watkins on Copyholds, Vol. I., p. 35 ; Vol. II., pp. 19—21 ; and p. 84, *post*.

(*k*) *Ibid.*, Vol. II., p. 22 ; Coke, The Compleat Copy-holder (1673), s. 45 ; Kitchin on Courts Leet, 2nd ed. (1653), p. 164.

(*l*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 20 (2) (iii.), (3).

Where a surrender or grant or a memorandum thereof has been duly stamped in accordance with the provisions of the Stamp Act, 1891, the certificate of the steward upon the face of the copy of court roll, or in the margin of the court roll itself, is evidence that the provisions of the Stamp Act have been complied with (*m*). Under the Act the steward is bound, under a penalty of £50, to refuse to accept a surrender or make any grant until there shall have been delivered to him a note stating all facts and circumstances affecting the liability to duty of the copy of court roll of any surrender or grant made in court, or the amount of duty with which any such copy of court roll is chargeable, and also to refuse to enter on the court rolls, or accept any presentment of, or admit any person to be tenant under or by virtue of any surrender or grant made out of court or any deed which is not duly stamped (*n*). Further, the steward must within four months from the day on which any surrender or grant is made in court make out a duly stamped copy of court roll of such surrender or grant, and have the same ready for delivery to the person entitled thereto (*o*). In default of so doing the steward incurs a fine of £50, and in such case the duty payable in respect of the copy of court roll is a debt due to the Crown from the steward, whether he has received it or not (*p*).

Requirements as to stamping.

164. It is the duty of the steward to deliver up when called upon, in proper order and condition, the papers of which he has charge (*q*).

Delivery up of papers.

SUB-SECT. 4.—*Fees and Charges.*

165. The fees which a steward may demand are dependent entirely upon the custom of the particular manor. There is no general rule applicable to all manors apart from legislative enactment. Hence, if there be no custom regulating the fee payable to the steward of a particular manor, he can only claim on a *quantum meruit* (*r*).

Steward's fees.

By custom a steward or his deputy may have a right to prepare all surrenders in the manor, and charge either a fixed (*s*) or a reasonable (*a*) fee for so doing.

On surrender.

Where several persons take admittances of copyholds from one surrenderor, the steward will be entitled to a fee upon each admittance in proportion to the work done in each case; and he will be similarly entitled to charge upon the several admittances,

On admittance.

(*m*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 65.
(*n*) *Ibid.*, s. 66.
(*o*) See *Doe* d. *Cawthorn* v. *Mee* (1833), 4 B. & Ad. 617. The tenant, however, may prove his title by reference to the original entry, without producing the stamped copy (*Doe* d. *Bennington* v. *Hall* (1812), 16 East, 208).
(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 67.
(*q*) *North Western Rail. Co.* v. *Sharp* (1854), 10 Exch. 451.
(*r*) Watkins on Copyholds, Vol. II., p. 19; *Everest* v. *Glyn* (1815), 6 Taunt. 425; *Traherne* v. *Gardner* (1856), 5 E. & B. 913 (on admittances). Where a person, acting as steward for the particular occasion only, happens to be also a solicitor, his charges for acting as steward on that occasion are not taxable under the Solicitors Act, 1843 (6 & 7 Vict. c. 73) (*Allen* v. *Aldridge* (1843), 5 Beav. 401).
(*s*) *R.* v. *Rigge* (1819), 2 B. & Ald. 550.
(*a*) *R.* v. *Bishop's Stoke* (*Lord of the Manor*) (1840), 8 Dowl. 608.

SECT. 1. The Lord's Steward.

even in one document, of one person upon the surrenders of several surrenderors. But where joint tenants take admittance the steward will, in the absence of special custom, be entitled to charge only such fees as he would be entitled to charge upon the admittance of one person (*b*).

A steward has been held to be entitled to be paid sixteen separate fees in respect of the admittance of a single purchaser to an allotment made under an Inclosure Act to his vendor in right of sixteen several copyhold tenements then held by him, the allotment being considered by the court to have been made to, and in respect of, each of the sixteen several tenements, and there being a custom enabling the steward to charge upon admittance to a portion of a tenement the same fee chargeable for the whole (*c*).

On a conveyance of copyholds under s. 95 of the Lands Clauses Consolidation Act, 1845, the steward is entitled to a fee upon surrender only without admittance (*d*).

Where a surrender, deed of surrender, will, grant, or admittance is entered on the court rolls of a manor pursuant to s. 85 of the Copyhold Act, 1894, the steward is entitled to the same fees and charges for such entry as for an entry made in pursuance of a presentment by the homage (*e*).

Power to enforce payment.

166. The steward may, before he accepts in court any surrender or makes in court any grant, demand the payment of his lawful fees in relation to the surrender or grant, together with the duty payable on the copy of court roll thereof; and may refuse to proceed in the matter or to deliver the copy of court roll to any person until the fees and duty are paid (*f*).

Where the steward demands from the tenant fees in excess of the amount warranted by the custom of the manor, the tenant may pay the fees demanded under protest and sue for the excess as money had and received to his use (*g*). But where the question as to the amount of the fees is one which affects the tenants of the manor as a whole, application may be made to the court for a declaration as to the right in question (*h*).

Solicitor steward.

167. A steward who is also a solicitor and acts for the tenant on a voluntary enfranchisement not under statute may make a specific charge for work done on the tenant's behalf in connection therewith (*i*). Stewards' fees, not being received by the steward in his character of solicitor, are not liable to be accounted for to the trust estate where the steward is solicitor trustee (*k*).

(*b*) *Traherne* v. *Gardner* (1856), 5 E. & B. 913.
(*c*) *Evans* v. *Upsher* (1847), 16 M. & W. 675.
(*d*) *Cooper* v. *Norfolk Rail. Co.* (1849), 3 Exch. 546.
(*e*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 85 (3).
(*f*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 68.
(*g*) *Traherne* v. *Gardner, supra.* As to money had and received, see title CONTRACT, Vol. VII., pp. 473 *et seq.*
(*h*) *Cowper* v. *Clerk* (1732), 3 P. Wms. 155; and see Scriven on Copyholds, p. 199. As to merely declaratory judgments and orders, see R. S. C., Ord. 25, r. 5; and title JUDGMENTS AND ORDERS.
(*i*) *Blaker* v. *Wells* (1873), 28 L. T. 21.
(*k*) *Re Corsellis, Lawton* v. *Elwes* (1887), 34 Ch. D. 675, C. A.

SECT. 2.—*The Bailiff.*

SECT. 2. The Bailiff.

Bailiff.

168. The bailiff of the court baron is an independent ministerial officer of the court baron. He is not the servant of the steward, and the steward is not responsible for his acts or omissions (*l*). In the warrant issued by the steward the bailiff is directed to levy so that the bailiff (not the steward) may have the goods of the tenant before the court baron on the day appointed (*m*).

The bailiff is appointed by parol by the lord or by the steward without any special authority to do so (*n*). A copyholder may be appointed bailiff of the manor in which he is a copyholder; for the office gives him no legal interest in the manor (*o*).

Powers.

The bailiff of a manor cannot, by virtue of his office, make a grant of manorial lands to be held by copy of court roll (*p*). But by special custom a copyholder may surrender out of court to the bailiff, and if there be a further special custom enabling him, he may so surrender by attorney (*q*).

Duties.

Where a tenant on the rolls has died seised of a copyhold tenement, and no one has come in to be admitted tenant thereof, the steward issues under seal to the bailiff a precept to seize the tenement *quousque*, that is, until some person or persons shall come in to take admittance thereto (*r*). Similarly, where a tenant has incurred a forfeiture to the lord, the steward issues under seal to the bailiff a precept to seize the forfeited tenement to the use of the lord absolutely (*s*). The bailiff makes a return to both these precepts to the effect that the seizure ordered has been made (*t*), and the returns are duly entered on the court rolls (*u*).

Part IV.—The Tenant of the Manor.

SECT. 1.—*Who may be Tenant.*

Persons who may be tenants.

169. Any person may be tenant of a manor, whether man or woman, married or single, infant, lunatic, a subject of the British Crown, or an alien (*v*).

Married women.

As regards a woman married before 1883, whose title to copyholds accrued before that year, otherwise than for her separate use,

(*l*) Watkins on Copyholds, Vol. II., p. 23; and see p. 60, *ante*.
(*m*) *Holroyd* v. *Breare* (1819), 2 B. & Ald. 473, where a difference between the sheriff's bailiff and the bailiff of the court baron is noted; see also *Bradley* v. *Carr* (1841), 3 Scott (N. R.), 521.
(*n*) Scriven on Copyholds, p. 434.
(*o*) *Gybson* v. *Searl* (1608), Cro. Jac. 176.
(*p*) Watkins on Copyholds, Vol. I., p. 36; and see p. 84, *post*.
(*q*) *Ibid.*, p. 103; Co. Litt. 59 a; and see p. 97, *post*.
(*r*) For form of precept, see Encyclopædia of Forms and Precedents, Vol. V., p. 199.
(*s*) For form of precept, see *ibid.*, p. 200.
(*t*) For form of return, see *ibid.*, p. 200.
(*u*) For form of entry, see *ibid.*, p. 201.
(*v*) See p. 85, *post*.

SECT. 1. Who may be Tenant.

her husband is seised as tenant in her right, and as such is entitled to sit on the homage and do the services in respect of the tenement so held (*w*). But where a woman marries after 1882, or her title to copyholds accrues after that year, she is enabled to hold them in her own right as her separate property independently of her husband, as though she were a single woman (*x*); and presumably customs and usages prevailing in various manors affecting the status and powers of married women tenants are now superseded or controlled so as to give full effect to the statutory provision referred to (*y*).

Infants.

An infant may be tenant of a manor, but he acts by a guardian, who is not, however, himself tenant (*z*).

Lunatics.

A lunatic, whether so found by inquisition or not, may be a tenant of a manor. Although his person and rights are subject to control under the Lunacy Act, 1890 (*a*), as amended by the Lunacy Act, 1891 (*b*), yet the lunatic is the tenant, for his committee or other the person appointed under the Lunacy Acts to deal with his property and affairs has no legal interest in his lands, but only a bare custody or authority (*c*).

Aliens.

Formerly an alien could not hold real estate in this country; but by the Naturalization Act, 1870 (*d*), real property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject.

It seems that a corporation aggregate cannot hold land by copy of court roll (*e*), nor can churchwardens or overseers of the poor (*f*).

Classes of tenants.

170. There are three classes of manorial tenants (*g*): (1) tenants of freeholds, sometimes called ancient freeholds (*h*), not parcel of the manor, but held of the lord of the manor by certain services and also sometimes subject to certain customs, such as a custom that alienation will be void unless presented at the lord's court (*i*);

(*w*) Watkins on Copyholds, Vol. I., p. 335; *Hedd* v. *Chalener* (1589), Cro. Eliz. 149. In some manors there are valid customs whereby a married woman may hold copyholds independently of her husband, and in others the wife's copyholds vest absolutely in the husband on marriage; see *Compton* v. *Collinson* (1790), 1 Hy. Bl. 334, *per* Lord LOUGHBOROUGH, at p. 343.

(*x*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75).

(*y*) See p. 13, *ante*.

(*z*) Watkins on Copyholds, Vol. I., p. 334. For convenience and to avoid repetition, the effect of the infancy of the tenant will be considered in detail as it arises in dealing with the various heads into which this subject has been divided; see p. 14, 49, *ante*; pp. 80, 85, 96, 97, 105, *post*.

(*a*) 53 Vict. c. 5, ss. 116, 125, 126.

(*b*) 54 & 55 Vict. c. 65, s. 27 (4).

(*c*) Scriven on Copyholds, p. 80.

(*d*) 33 Vict. c. 14, s. 2; see, generally, title ALIENS, Vol. I., pp. 301 *et seq.*

(*e*) Watkins on Copyholds, Vol. I., p. 37; see *A.-G.* v. *Lewin* (1837), 1 Coop. Pr. Cas. 51, *per* SHADWELL, V.-C., at p. 54; *Dimes* v. *Grand Junction Canal Co.* (1846), 9 Q. B. 469; Grant, Law of Corporations, p. 109; see also p. 14, *ante*; p. 105, *post*; and title CORPORATIONS, p. 372, *post*.

(*f*) *Re Paddington Charities* (1837), 8 Sim. 629.

(*g*) For a learned discussion on freeholds, customary freeholds, and copyholds, see the argument in *Rowe* v. *Brenton* (1828), 3 Man. & Ry. (K. B.) 332.

(*h*) For an instance, see *Copestake* v. *Hoper*, [1908] 2 Ch. 10, C. A.

(*i*) Williams on Seisin, p. 130; *Perryman's Case* (1599), 5 Co. Rep. 84; and see *Passingham's Case* (1855), 17 C. B. 299.

(2) the customary freeholder, including the tenant in ancient demesne (*j*); and (3) the copyholder, including the tenant who holds by tenant right (*k*). Sometimes it is extremely difficult to determine the tenure upon which manorial lands are held (*l*).

Distinction between customary freeholds and copyholds.

The second and third classes differ from one another in two respects, namely, the tenant of the second class holds of the manor according to the custom of the manor, but not at the will of the lord, whereas the tenant of the third class is expressed to hold at the will of the lord according to the custom of the manor, the freehold being as to the second class in the tenant, but as to the third class in the lord (*m*). On the other hand, where lands are held by copy of court roll according to the custom of the manor, even though not at the will of the lord, they are, generally speaking, copyhold (*n*).

Copyholds almost invariably pass from one tenant to another by surrender and admittance (*o*), whereas customary freeholds are seldom transferred by that method, but by deed and admittance or some other mode (*p*). Where in order to pass a customary tenement the custom of the manor requires a bargain and sale as well as a surrender and admittance, the tenement is customary freehold, and the freehold is not in the lord, but in the tenant (*q*).

Tenants in ancient demesne

171. Tenants in ancient demesne are those who have either been freely enfeoffed by charter of land part of an ancient manor annexed to the Crown, or who, being of free blood, yet hold the land by villein service. The latter cannot be ousted from their tenements so long as they perform the services appertaining to their tenements, nor can their services be increased or altered in any way (*r*). In

(*j*) *Cresswell* v. *Hawkins* (1857), 3 Jur. (N. S.) 407.

(*k*) See *Graham* v. *Jackson* (1845), 6 Q. B. 811. As to tenant right, see p. 68, *post*.

(*l*) See *Garbutt* v. *Trevor* (1863), 12 W. R. 471 (not freehold); *Passingham* v. *Pitty* (1855), 4 W. R. 122 (freehold).

(*m*) *Godolphin* (*Earl*) v. *Penneck* (1754), 2 Ves. Sen. 271; *Gale* v. *Noble* (1697), Carth. 432; *Vaughan* v. *Atkins* (1771), 5 Burr. 2767; *Brown* v. *Rawlins* (1806), 7 East, 409; *Hill* v. *Bolton* (1689), Lut. 1171; *Crowther* v. *Oldfield* (1698), Lut. 125; and see *Lingwood* v. *Gyde* (1866), L. R. 2 C. P. 72, *per* WILLES, J., at p. 78. As the law peculiar to a tenant of a manor is for the most part the same for both these classes of tenants, the statement of it here made must be considered to be applicable to both classes, except where it is specifically stated to be applicable to one class only.

(*n*) *Doe* d. *Edmunds* v. *Llewellin* (1835), 2 Cr. M. & R. 522. Customary estates not held at the will of the lord are sometimes called "privileged copyholds" (Watkins on Copyholds, Vol. I., p. 59; Scriven on Copyholds, p. 14).

(*o*) Watkins on Copyholds, Vol. I., pp. 70, 173; *Doe* d. *Cook* v. *Danvers* (1806), 7 East, 299; *Portland* (*Duke*) v. *Hill* (1866), L. R. 2 Eq. 765; *Doe* d. *Reay* v. *Huntington* (1803), 4 East, 271, 288 (tenant right); *Graham* v. *Jackson*, *supra*. See *Doe* d. *Carlisle* (*Earl*) v. *Towns* (1831), 2 B. & Ad. 585 (a case of copyholds passing by bargain and sale, and not by surrender and admittance).

(*p*) Watkins on Copyholds, Vol. I., p. 58; *Stephenson* v. *Hill* (1762), 3 Burr. 1273; *Doe* d. *Reay* v. *Huntington*, *supra*.

(*q*) *Bingham* v. *Woodgate* (1829), 1 Russ. & M. 32, 750. But see *Doe* d. *Carlisle* (*Earl*) v. *Towns*, *supra*. As to the nature and effect of evidence adducible on the question whether a tenement is copyhold or customary freehold, see *Brown* v. *Rawlins* (1806), 7 East, 409.

(*r*) *Portland* (*Duke*) v. *Hill*, *supra*, *per* PAGE WOOD, V.-C., at p. 783, quoting from Britton, Nicholl's translation, pp. 113, 165.

SECT. 1. Who may be Tenant.

the case of tenants in ancient demesne, the freehold is in the tenant, not in the lord (*s*).

Tenant right.

172. Tenant right is a species of copyhold tenure, found almost solely in the north of England, in which the tenant holds lands parcel of a manor of the lord, but not necessarily expressly at his will, according to the custom of the manor, and with the right of descent from ancestor to heir (*t*).

The name is said to be due to the fact that the tenements are granted only for the joint lives of the tenant and the admitting lord, so that, although on the death of that lord the estate determines, yet the tenant has a right to be admitted by the new lord (*u*).

SECT. 2.—*Nature of the Tenant's Estate.*

SUB-SECT. 1.—*Generally.*

Tenant's estate regulated by custom.

173. The nature of the estate of a manorial tenant is regulated almost entirely by the custom of the manor of which the tenant holds, but, subject to the paramount force of such custom, the estates and interests for which the tenant may hold are similar in all respects to the estates and interests for which ordinary freeholds are held, and are governed by the same rules of law (*w*) and equity as are applicable to ordinary freehold estates and by those statutes which deal with real property generally (*a*). Hence it is proposed here to deal only with those cases in which the nature of the tenant's estate and the rules applicable thereto differ from that prevailing in respect of real property generally.

In some manors it is not the custom for a tenant to hold in fee simple (or *quasi*-fee simple, as it is sometimes called), but for one or more lives, with or without a right to renew or to substitute a new life for one that has dropped (*b*). Again, in some manors no estates tail can be created, and where there is no special custom permitting an entail, an attempt to limit an estate tail will only operate as a conditional fee (*c*).

Words requisite to pass fee simple.

174. An apt phrase must be used in order to create an estate in copyholds (*d*), and, having regard to the fact that copyholds are, in theory at least, held at will, and are governed by the custom of the

(*s*) *Merttens* v. *Hill*, [1901] 1 Ch. 842, where the nature of ancient demesne was discussed, and an alleged custom restricting freedom of alienation was held bad as being inconsistent with the nature of the tenant's estate.

(*t*) Watkins on Copyholds, Vol. II., p. 152 ; and see *Doe* d. *Reay* v. *Huntington* (1803), 4 East, 271 ; *Burrell* v. *Dodd* (1803), 3 Bos. & P. 378.

(*u*) *Somerset* (*Duke*) v. *France* (1727), 1 Stra. 654 ; *Fawcett* v. *Lowther* (1751), 2 Ves. Sen. 300. As to a general fine, see p. 26, *ante*.

(*w*) Thus, the rule of law known as the rule in *Shelley's Case* (as to which see title REAL PROPERTY AND CHATTELS REAL) is as applicable to copyholds as to ordinary freeholds (Watkins on Copyholds, Vol. I., p. 134).

(*a*) As to the law applicable to freehold estates, see title REAL PROPERTY AND CHATTELS REAL.

(*b*) Watkins on Copyholds, Vol. I., p. 71.

(*c*) *Ibid.*, p. 217 ; *Roe* d. *Crow* v. *Baldwere* (1793), 5 Term Rep. 104, *per* Lord KENYON, C.J., at p. 111; *Moore* v. *Moore* (1755), 1 Amb. 279 ; *Royden* v. *Moulster* (1626), Godb. 367. As to fee conditional and fee tail in copyholds, see p. 70, *post*.

(*d*) See *Idle* v. *Cook* (1705), 1 P. Wms. 70 ; *Doe* d. *Nicholson* v. *Welford* (1840), 12 Ad. & El. 61.

manor, phrases such as "*sibi et suis*," and "*sibi et assignatis*," and "sequels in right" have been held sufficient to create an estate of inheritance instead of the word "heirs," which by some authorities has been held to be unsuitable in the case of a tenancy at will (*e*). Where assurances of copyholds or customary freeholds are made otherwise than by deed or will (*f*), the words "fee simple" alone cannot be relied on to pass an estate of inheritance in the lands assured (*g*).

Effect of grant.

175. Immediately a grant is made to a tenant by the lord the grantee is in by the custom, which is paramount to the lord's estate or interest in the manor; and therefore, provided the lord is qualified as lord of the manor, even though he be only tenant at will thereof (*h*), to make a grant at the moment it is made, there need be no correlation between the estate or interest of the lord and that of the grantee, neither can any charges or incumbrances upon the estate or interest of the lord be imposed upon the estate or interest of the tenant, or *vice versâ* (*i*).

As against the lord of the manor, a tenant cannot impose an unusual burden upon his tenement without the knowledge or consent of the lord; and the owner, even after enfranchisement, may repudiate a burden imposed by a deed executed by a former copyholder which was not entered on the court rolls, and of which he had no notice (*k*).

Copyholds within Settled Land Acts.

176. Copyholds may, like ordinary freeholds, be the subject of settlement, and are within the operation of the Settled Land Acts, 1882 to 1890 (*l*).

Partition.

177. Formerly estates in copyhold lands could not be partitioned as between tenants in common in fee without the licence of the lord of the manor (*m*). But now, in an action for the partition of land of copyhold or customary tenure, the like order may be made as may be made with respect to land of ordinary freehold tenure (*n*); and in such a case the court may make a declaration as to the proportions in which the estate ought to be divided without directing a commission, each party having liberty to bring proposals for partition before the judge in chambers (*o*).

(*e*) Watkins on Copyholds, Vol. I., p. 135; *Bunting* v. *Lepingwell* (1585), 4 Co. Rep. 29 a; *Hide* v. *Welsh* (1583), Choyce Cases in Chancery, 165.

(*f*) See Wills Act, 1837 (7 Will 4 & 1 Vict. c. 26), s. 28.

(*g*) The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 51, applies only to assurances by deed, and declares that in a deed it shall be sufficient, in the limitation of an estate in fee simple or in tail, to use the words "fee simple" or "in tail" without the words "heirs" or "heirs of the body," as the case may be; see, generally, title REAL PROPERTY AND CHATTELS REAL.

(*h*) Watkins on Copyholds, Vol. I., p. 31; Vol. II., p. 88.

(*i*) *Ibid.*, Vol. I., p. 64; *Swayne's Case* (1608), 8 Co. Rep. 63; and see p. 98 *post.*

(*k*) *Richards* v. *Harper* (1866), L. R. 1 Exch. 199 (as to letting down the surface).

(*l*) See *Re Price, Leighton* v. *Price* (1884), 27 Ch. D. 552; see also Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2, 3, 21 (5).

(*m*) *Horncastle* v. *Charlesworth* (1840), 11 Sim. 315.

(*n*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 87.

(*o*) *Bowles* v. *Rump* (1861), 9 W. R. 370, following *Clarke* v. *Clayton* (1860), 2 Giff. 333. As to partition generally, see title PARTITION.

SECT. 2. Nature of the Tenant's Estate.

178. Copyhold lands are within the statute 27 Eliz. c. 4 (*p*), and are therefore within the Voluntary Conveyances Act, 1893 (*q*).

179. The remedy given to executors and administrators by distress or action for arrears of rent (*r*) applies to copyholds (*s*).

A charge of debts by will on real estate generally will include copyholds (*t*), and where there are freeholds as well as copyholds, both will be charged rateably according to their respective values (*u*).

Voluntary Conveyances Act, 1893.

Liability for debt.

Customaryhold and copyhold lands of a deceased person not charged or devised subject to debts by him are assets in equity for the payment of his simple contract debts (*w*). Customary and copyhold lands are also liable to be taken in execution by a judgment creditor (*x*). Copyholds are liable to sequestration (*y*).

Action for trespass.

A copyholder wrongfully dispossessed of his tenement by the lord may either bring an action for trespass, or obtain equitable relief (*z*), by claiming a declaration that he is entitled to possession or that the lord's seizure or forfeiture should be set aside (*a*).

SUB-SECT. 2.—*Fee Conditional and Fee Tail.*

Fee conditional.

180. Inasmuch as neither customary freehold estates (*b*), including lands held by tenancy in ancient demesne (*c*), nor copyholds are within the statute "De Donis" (*d*), they are not subject to estates tail unless there be a special custom of the manor to warrant it (*e*). It follows therefore that where the limitations are such that, for want of the aid of the statute or special custom, the limitations do not operate as an estate tail, they will operate as a fee conditional, and will become absolute upon the condition being satisfied by the birth of issue (*f*).

Custom to entail.

181. The burden of proving a custom to entail copyholds lies on the party alleging it (*g*), and for that purpose he must prove not only that lands have been granted to persons and the heirs of their

(*p*) *Doe* d. *Tunstill* v. *Bottriell* (1833), 5 B. & Ad. 131.
(*q*) 56 & 57 Vict. c. 21. See title FRAUDULENT AND VOIDABLE CONVEYANCES.
(*r*) Stat 32 Hen. 8, c. 37 (1540). See title EXECUTORS AND ADMINISTRATORS.
(*s*) *Westmerland's (Earl) Case* (1575), 3 Leon. 59.
(*t*) *Coombes* v. *Gibson* (1783), 1 Bro. C. C. 273; *Kentish* v. *Kentish* (1791), 3 Bro. C. C. 257.
(*u*) *Growcock* v. *Smith* (1794), 2 Cox, Eq. Cas. 397.
(*w*) Administration of Estates Act, 1833 (3 & 4 Will. 4), c. 104; and see *Rolfe* v. *Chester* (1855), 20 Beav. 610.
(*x*) Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 11.
(*y*) *Carmarthen (Marquis)* v. *Hanson* (1731), 3 Swan. 294; *Dunkley* v. *Scribnor* (1815), 2 Madd. 443. As to the effect of the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), see p. 88, *post*.
(*z*) *Andrews* v. *Hulse* (1858), 4 K. & J. 392.
(*a*) Scriven on Copyholds, 7th ed., p. 466.
(*b*) Watkins on Copyholds Vol. I., p. 241.
(*c*) *Cresswell* v. *Hawkins* (1857), 3 Jur. (N. S.) 407. As to ancient demesne, see p. 67, *ante*.
(*d*) 13 Edw. 1, c. 1, 1285; *Doe* d. *Wightwick* v. *Truby* (1774), 2 Wm. Bl. 946. As to estates tail, see title REAL PROPERTY AND CHATTELS REAL.
(*e*) *Roe* d. *Crow* v. *Baldwere* (1793), 5 Term Rep. 104. As to the application of the statute "De Donis," see Watkins on Copyholds, Vol. I., p. 207.
(*f*) *Pullen* v. *Middleton (Lord)* (1753), 9 Mod. Rep. 483; and see *Doe* d. *Taylor* v. *Crisp* (1838), 8 Ad. & El. 779.
(*g*) *Hardcastle* v. *Dennison* (1861), 4 L. T. 707, which case shows the nature of the evidence unsuccessfully adduced to prove a custom to entail.

bodies, but also that there have been surrenders in tail with remainders over (for otherwise it may be a fee simple conditional), or that the lands have so long followed a course of descent according to the limitation as to exclude the supposition of a fee simple conditional (*h*). No entail of an equitable estate or interest in copyholds can be created where there is no corresponding custom to entail the legal estate (*i*). A surrender of copyholds to the use of husband and wife for their lives and their heirs and assigns, and for default of such issue to the right heirs of the surrenderor, will not create an estate tail, but an estate in fee simple (*k*).

Barring entail.

182. As in the case of ordinary freeholds, estates tail in copyholds and customary freeholds may be destroyed by a process known as barring the entail (*l*). Before 1833 entails of copyholds and customary freeholds could only be barred by the customary method obtaining in each particular manor, such methods being usually one or more of the three following, namely, (1) recovery in the lord's court; (2) surrender; (3) forfeiture and regrant (*m*). Where there was no special custom a surrender would be sufficient (*n*). But since the passing of the Fines and Recoveries Act, 1833 (*o*), all customary methods of barring estates tail in copyholds have been superseded by the method provided by that Act, that is to say, where the estate tail is a legal estate by surrender and where the estate tail is an equitable estate either by surrender or by deed (*p*). But it seems that the customary method of barring estates tail in customary freeholds must still be observed (*q*).

Provisions of Fines and Recoveries Act.

Protector of settlement.

183. The regulations provided by the Fines and Recoveries Act, 1833 (*r*), with regard to the barring of estates tail in copyholds are similar to those provided for cases of ordinary freeholds (*s*) subject to the following modifications:—Where the protector of the settlement consents by deed to the barring of the entail, such deed must, either at or before the time when the surrender is made, be executed by the protector and produced to the lord or his steward or deputy

(*h*) *Moore* v. *Moore* (1755), 2 Ves. Sen. 601, where Lord HARDWICKE, L.C., remarked that entails were recognised before the statute "De Donis."

(*i*) *Pullen* v. *Middleton* (*Lord*) (1753), 9 Mod. Rep. 483.

(*k*) *Idle* v. *Cook* (1705), 1 P. Wms. 70.

(*l*) Watkins on Copyholds, Vol. I., p. 220.

(*m*) *Carr* v. *Singer* (1755), 2 Ves. Sen. 604.

(*n*) *Otway* v. *Hudson* (1706), 2 Vern. 585.

(*o*) 3 & 4 Will. 4, c. 74.

(*p*) *Ibid.*, s. 50. For forms of disentailing assurances, see Encyclopædia of Forms, Vol. V., pp. 452 *et seq.*

(*q*) *R.* v. *Ingleton* (*Lords of the Manor*) (1840), 8 Dowl. 693, where there were no court rolls of the manor, and a mandamus directing the lord to enter on the court rolls an indenture of disentailing assurance of an equitable estate tail in customary freeholds of the manor, the legal tenant in tail objecting to the application, was refused, COLERIDGE, J., stating at pp. 698, 701 that, notwithstanding the definition of the word "land" in s. 1 of the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), the Act did not apply at all to lands of customary freehold tenure. The soundness of the *dictum* as to the applicability of the Act to customary freeholds may be doubted, but the point was pressed upon the judge and the *dictum* cannot be treated as merely *obiter*.

(*r*) 3 & 4 Will. 4, c. 74.

(*s*) See title REAL PROPERTY AND CHATTELS REAL.

SECT. 2. Nature of the Tenant's Estate.

steward, and unless so produced will be void, and on production the lord or his steward or deputy steward must indorse on the deed in writing an acknowledgment of such due production, and the deed with the indorsement thereon must be entered on the court rolls of the manor, and a memorandum of such entry on the court rolls must be indorsed on the deed and signed by the lord or his steward or deputy steward (*t*). But if the consent of the protector is not given by deed, then it must be given by the protector to the person taking the surrender by which the entail is to be barred, and if such surrender be made out of court, it must be expressly stated in the memorandum of such surrender that such consent had been given, and such memorandum must be signed by the protector, and the lord or his steward or deputy steward must cause the memorandum, with such statement therein as to consent, to be entered on the court rolls of the manor, and it is good evidence of the facts relating thereto. If the surrender to bar the entail be made in court, the lord or his steward or the deputy steward must cause an entry of such surrender, containing a statement that such consent has been given, to be made on the court rolls, and such entry or a copy thereof is good evidence of the facts relating thereto (*a*).

Equitable estate tail.

Where, however, the estate tail to be barred is merely an equitable estate tail, it may be barred in the same way as though the lands subject to such equitable estate tail were of freehold tenure, and the deed by which such estate tail is to be barred must be entered on the court rolls of the manor, and if there be a protector who gives his consent by a separate deed, such deed must be executed by him before the day on which the disentailing deed is executed by the equitable tenant in tail, and such deed of consent must be entered on the court rolls of the manor, and the lord or his steward or deputy steward must indorse on each deed so entered a memorandum testifying the entry on the court rolls. But such deeds so entered will be void against all persons claiming the same lands for valuable consideration under a subsequent assurance duly entered on the rolls before such disentailing deed (*b*).

Enrolment.

184. The only enrolment required in the case of deeds or surrenders for barring estates tail in copyholds is enrolment by entry on the court rolls of the manor (*c*).

The deed to be executed for the purpose of barring an equitable estate tail in copyholds must be entered on the court rolls of the manor within six calendar months after execution thereof (*d*).

(*t*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 51. For forms of consent and indorsements, see Encyclopædia of Forms, Vol. V., pp. 455 *et seq.*

(*a*) *Ibid.*, s. 52.

(*b*) *Ibid.*, s. 53. Compare *Whitmore-Searle* v. *Whitmore-Searle*, [1907] 2 Ch. 332, where KEKEWICH, J., held that a disentailing assurance of ordinary freeholds was not rendered ineffective by the fact that the protector of the settlement signified his consent after the execution of the assurance by and death of the tenant in tail.

(*c*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 54.

(*d*) *Gibbons* v. *Snape* (1863), 1 De G. J. & Sm. 621, C. A.; and see *Green* v. *Paterson* (1886), 32 Ch. D. 95, C. A. (declaration of trust of legal estate); *Boyd* v. *Pawle* (1866), 14 L. T. 753.

185. Where two tenants in common in tail agree to partition copyholds, and each surrenders the portion allotted to the other, the estates tail are barred only as to the moiety so surrendered (*e*). Tenants in common.

186. Enfranchisement of copyhold lands subject to an estate tail will operate to bar such estate tail (at any rate, where the estate is legal) if the enfranchisement be effected by merger of the lord's interest in the land with that of the tenant (*f*), or by enfranchisement at common law (*g*). But if the enfranchisement be effected under the Copyhold Act, 1894 (*h*), it will not so operate, nor, it is surmised, will it so operate where the seignory or freehold or fee simple is purchased under the Settled Land Act, 1882 (*i*). Enfranchisement.

187. Where a person has an equitable estate tail in a copyhold, with a remainder expectant on such estate tail, and the legal fee descends to him, the equitable estate tail is not merged in the latter and the expectant remainder defeated, since, in order to effect a merger, the equitable and legal estate must be of the same quality, and an estate tail and a fee simple are not of the same quality (*k*). Merger.

188. In the case of a tenant in tail of copyholds becoming a bankrupt, his trustee in bankruptcy may deal with his estate tail for the benefit of the bankrupt's creditors as fully as the bankrupt himself might have done (*l*). Bankruptcy.

189. Where the tenant in tail has been convicted of felony, and an administrator has been appointed under the Forfeiture Act, 1870 (*m*), the felon, and not his administrator, is the proper person to bar the entail (*n*). Felony.

190. Where an estate tail in copyholds has lain dormant for a long period, during which issue of the original tenant in tail have been admitted as heirs in fee simple, a presumption arises that the entail has been duly barred (*o*). Presumption of bar.

SUB-SECT. 3.—*Estates for Life.*

191. Copyholds and customary freeholds may be granted and limited to be held by the tenant for his own life either alone or jointly with others. Estates for life.

(*e*) *Oakley* v. *Smith* (1759), Amb. 368.

(*f*) *Challoner* v. *Murhall* (1795), 2 Ves. 524. Strictly speaking, the estate tail is merged, not barred. As to tenancy in ancient demesne, see *Cresswell* v. *Hawkins* (1857), 3 Jur. (N. S.) 407; and p. 67, *ante*.

(*g*) *Re Hart, Ex parte London School Board* (1889), 41 Ch. D. 547; see p. 111, *post*.

(*h*) 57 & 58 Vict. c. 46, s. 21 (2).

(*i*) 45 & 46 Vict. c. 38, s. 21 (v.).

(*k*) *Merest* v. *James* (1821), 6 Madd. 118.

(*l*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 56 (5), incorporating Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 56—73; see *Re Gaskell and Walters' Contract*, [1906] 2 Ch. 1, C. A.; and title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 121.

(*m*) 33 & 34 Vict. c. 23; see title CRIMINAL LAW AND PROCEDURE.

(*n*) *Re Gaskell and Walters' Contract*, *supra*.

(*o*) *Wadsworth's Case* (1633), Clay. 26, cited in Watkins on Copyholds, Vol. I., p. 241.

SECT. 2. Nature of the Tenant's Estate.

Sometimes there is superadded by custom a right in the tenant to nominate a successor (*p*). A customary power to nominate a successor must be exercised by the person or persons having the legal estate, for instance, in the case of a devise to trustees, by such trustees. But although by the custom the tenements are only held for life with a power to nominate a successor, the testator has power to dispose of the equitable inheritance by giving successive equitable interests (*q*). As a general rule a copyholder for life cannot by custom claim a right to surrender his life estate and call upon the lord to introduce another in his place, unless there be a fine certain, for the right to renew is at the will of the lord (*r*). The heir of the last survivor of several named in a grant to hold copyholds *successivé* is not, in the absence of custom, entitled to nominate a successor to be admitted tenant (*s*).

Right to nominate a successor.

Grants for lives in succession.

192. Where copyholds are granted to several persons for their lives *successivé*, that is, for their lives and the life of the longest liver, they take as joint tenants unless by special custom they take and hold the copyhold tenement successively in the order named (*t*), and a custom will be good which allows the first named of several tenants for life on the court roll to alienate the entire estate to the exclusion of the interests of the others (*a*) Again, if copyholds are granted for two or three lives in succession, and one only pays the purchase-money, the others are trustees for him notwithstanding that the custom of the manor expressly states that the lives shall take in succession (*b*), unless there is clear evidence of a contrary intention (*c*) or the principle of advancement applies (*d*).

A custom that a person named by the purchaser as the second life upon which the copyhold estate is held shall take beneficially so as to be inconsistent with the doctrine of resulting trusts is bad as unreasonable (*e*).

SUB-SECT. 4.—*Estates pur autre vie.*

Estates *pur autre vie.*

193. Copyholds and customary freeholds may be granted and limited to be held for the life of another or the lives of several others, but the lord cannot exceed the limits prescribed by the custom of the manor, though he may grant for an estate less than

(*p*) *Rowles* v. *Mason* (1612), 2 Brownl. 199.
(*q*) *Allen* v. *Bewsey* (1877), 7 Ch. D. 453, C. A.
(*r*) *Walker* v. *Abingdon* (*Lord*) (1841), 10 L. J. (CH.) 289.
(*s*) *Grafton* (*Duke*) v. *Horton* (1726), 2 Bro. Parl. Cas. 284.
(*t*) Watkins on Copyholds, Vol. I., pp. 136, 145, 366, 376; *Rundle* v. *Rundle* (1692), 2 Vern. 264.
(*a*) *Phillips* v. *Ball* (1859), 29 L. J. (C. P.) 7.
(*b*) Watkins on Copyholds, Vol. I., p. 273 (1); *Rumboll* v. *Rumboll* (1761), 2 Eden, 15; *Smith* v. *Baker* (1737), 1 Atk. 385; and see *Prankerd* v. *Prankerd* (1820), 1 Sim. & St. 1.
(*c*) *Benger* v. *Drew* (1721), 1 P. Wms. 781.
(*d*) *Murless* v. *Franklin* (1818), 1 Swan. 13; *Jeans* v. *Cooke* (1857), 27 L. J. (CH.) 202. As to the law relating to cases of payment for the benefit of a person in relation to whom the person making the payment stood *in loco parentis*, see title INFANTS AND CHILDREN.
(*e*) *Lewis* v. *Lane* (1834), 2 My. & K. 449; and see *Edwards* v. *Edwards* (1836), 2 Y. & C. (EX.) 123.

that warranted by the custom (*f*). Thus where by custom he may grant in fee he may grant for a life or lives, and where he may grant for lives he may grant for one life only, but where he may grant for one life only he may not grant for the joint lives of two persons (*g*).

Wills Act, 1837.

194. By the Wills Act, 1837, a person who is tenant *pur autre vie* of customary freeholds, tenant right, customary, or copyhold lands, may dispose of his estate or interest therein by will (*h*); and whether he die testate, but without making any disposition thereof by will, or intestate, such his estate or interest will, in case there be no special occupant thereof, go to the executor or administrator of the party who had the grant; and whether it come to the executor or administrator either by reason of a special occupancy or by virtue of the Wills Act, 1837, it will be assets in his hands, and will go and be applied as personal estate of the testator or intestate (*i*).

In some manors there is a custom that when a copyhold tenement is granted to a person to hold the same to such person for the lives of two or more other persons and the life of the longest liver of such other persons successively at the will of the lord according to the custom of the manor, and the grantee dies during the life or lives of any one or more of such other person or persons without having devised his said tenement, such one or more of such other person or persons so surviving such grantee is or are entitled, by virtue of such grant, to take and hold the tenement successively in the order in which they are respectively named in the grant during his or their life or lives respectively, but that if the grantee devise the tenement, such devisee will be entitled to hold it during the life or lives of such other person or persons so surviving as aforesaid (*k*).

But if a tenant of copyholds has obtained a new grant to hold to strangers *successivè* and has paid the fine, the equitable interest in the copyholds passes on his death by resulting trust to his legal personal representative, and not to the *cestuis que vie*, who take the legal estate as trustees (*l*).

(*f*) Watkins on Copyholds, Vol. I., p. 65; Coke, The Compleat Copy-holder (1673), s. 41.

(*g*) Watkins on Copyholds, Vol. I., p. 66; *Gravenor* v. *Brook* (1593), Poph. 32. A grant for widowhood is valid under a custom to grant for one life only (*ibid.*).

(*h*) 7 Will. 4 & 1 Vict. c. 26, s. 3; see p. 36, *ante*. Formerly on the death of a tenant *per autre vie* of copyholds during the lifetime of the *cestui que vie* there could be no general occupancy, as the freehold was always in the lord (*Doe* d. *Lempriere* v. *Martin* (1717), 2 Wm. Bl. 1148), and the land reverted to the lord unless there was some special custom to the contrary, *e.g.*, enabling the *cestui que vie* to take as against the lord (*Doe* d. *Nepean* v. *Goddard* (1823), 1 B. & C. 522), or enabling the deceased tenant to dispose of the residue of his estate, or enabling his heir or next of kin or legal personal representative to claim admittance for such residue of his estate (Watkins on Copyholds, Vol. I., p. 365).

(*i*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 6. It is suggested that these sections do not apply in the case of a grant for lives *successivè* where the tenant in possession is also one of the lives, as he holds really for his life and not *pur autre vie* at all.

(*k*) *Doe* d. *Nepean* v. *Goddard*, *supra*.

(*l*) *Withers* v. *Withers* (1752), 1 Amb. 151; *Howe* v. *Howe* (1686), 1 Vern. 415. It has not been decided whether the Wills Act, 1837, would operate in the case of a grant for lives *successivè* as against a special custom.

SECT. 2
Nature of the Tenant's Estate.

When no estate of inheritance.

195. Where a tenant holds to him and his heirs for lives, but there is no right of renewal on the dropping of the lives, he has no estate of inheritance, and an alleged custom enabling him to cut timber growing on the land will be bad (*m*). Similarly, where copyholds are held for the joint lives of the lord and the tenant, there is no estate of inheritance, the copyhold estate ceases on the death of the tenant, and the heir has only a right to a renewal of the tenancy (*n*).

Right to renew.

196. In the case of copyholds for lives the heir cannot claim a right to renew except upon payment of a fine certain, as distinguished from a reasonable or arbitrary fine (*o*); and where the beneficial tenant for life has paid the fine upon renewal, but has taken no advantage therefrom by reason of his dying in the lifetime of the surviving original life, his estate is entitled to be reimbursed out of the trust estate the whole amount of the fine so paid by him (*p*). Where, however, a tenant for life enjoys an advantage from the renewal, he must pay a proportion of the cost of renewal ascertained by reference to the actual period of his enjoyment, and the remainderman must pay the balance, with compound interest down to the death of the tenant for life and simple interest thenceforward (*a*).

Effect of surrender.

197. As a general rule the effect of a surrender of copyholds for lives is to determine the estate absolutely, not to convey it (*b*).

SUB-SECT. 5.—*Estates for Years.*

Term of years.

198. Copyholds and customary freeholds may by special custom be granted by the lord for a term of years if the tenant should so long live, or for a term simply, with or without a right of renewal of the term by the tenant (*c*). If the lord accept a surrender of copyholds limiting them for a term of years, he is bound to admit thereon for the term so limited (*d*). The executors or administrators of a deceased termor are entitled to be admitted for the residue of the interest therein of the deceased (*e*).

(*m*) *Mardiner* v. *Elliot* (1788), 2 Term Rep. 746.

(*n*) *Doe* d. *Dand* v. *Thomson* (No. 2) (1849), 18 L. J. (Q. B.) 326, where the habendum was not to the tenant "and his heirs," but simply "for the joint lives" etc.

(*o*) *Abergavenny* (*Lord*) v. *Thomas* (1739), 3 Anst. 668; *Wharton* v. *King* (1796), 3 Anst. 659, 668. As to fines, see pp. 26 *et seq.*, *ante*.

(*p*) *Harris* v. *Harris* (No. 3) (1863), 32 Beav. 333. As to an application during the life of the same tenant for life for reimbursement being postponed till his death, see *Harris* v. *Harris*, as reported (1862) 10 W. R. 826.

(*a*) *Bradford* v. *Brownjohn* (1868), 3 Ch. App. 711.

(*b*) *Anon.* (1691), Freem. (CH.) 118; *Chantrell* v. *Randall* (1661), 1 Lev. 21; and see p. 92, *post*.

(*c*) Watkins on Copyholds, Vol. I., p. 66; *Paye's Case* (1623), Cro. Jac. 671. In these cases it is usually the custom for the person seeking renewal to pay a fine certain thereon. As to the conventionary lands of the Duchy of Cornwall, see *Rowe* v. *Brenton* (1828), 8 B. & C. 758.

(*d*) Watkins on Copyholds, Vol. I., p. 302.

(*e*) *Bath* (*Earl*) v. *Abney* (1757), 1 Burr. 206.

SUB-SECT. 6.—*Estates in Remainder.*

SECT. 2. Nature of the Tenant's Estate.

Remainders.

199. As a general rule a copyholder may surrender his tenement to the use of several persons in succession, after an estate for life or some lesser estate, by way of remainder, whether vested or contingent (*f*). A vested remainder is said to be in the seisin, and the owner of it at the time of the admittance of the particular tenant becomes tenant to the lord by virtue of the admittance of the particular tenant, and may, in the absence of special custom to the contrary (*g*), dispose of his estate without any actual admittance of himself personally (*h*). But a contingent remainder is not in the seisin, and therefore the person entitled to it must be personally admitted tenant to the lord on the remainder coming into possession or becoming vested, for the admittance of the particular tenant will not operate as his admittance, and a contingent remainder cannot be disposed of by surrender and admittance before it becomes vested and admittance taken (*i*). It can be disposed of by deed (*k*).

No trustee necessary to preserve contingent remainders.

Where estates in copyholds were limited by way of contingent remainder, the interposition of a trustee to preserve them was never necessary, as the estate of the lord was sufficient to protect them from destruction (*l*), so that where the events preceding that upon which a contingent remainder was to become vested so happened that the remainder did not fall into possession immediately upon the determination of the particular estate, the lord could enter meanwhile. For instance, where the contingent remainder was limited to take effect after the death of the particular tenant, and the latter incurred a forfeiture to the lord, the lord was entitled to hold until the contingent remainder could become vested (*m*). Contingent remainders in copyhold or customary estates are now protected by the Contingent Remainders Amendment Act, 1877 (*n*).

SUB-SECT. 7.—*Estates in Reversion.*

Reversions

200. A reversioner subject to certain copyhold interests is competent to show by any evidence that the copyhold interests are at an end without of necessity being obliged to produce copies of the court rolls (*o*).

(*f*) Watkins on Copyholds, Vol. I., pp. 250, 254, 337 ; *Stanton* v. *Barnes* (1595), Cro. Eliz. 373 ; *Bullock* v. *Dibley* (1593), 4 Co. Rep. 23 a ; and see *Doe* d. *Burrough* v. *Reade* (1807), 8 East, 353.

(*g*) *Doe* d. *Whitbread* v. *Jenney* (1804), 5 East, 522.

(*h*) *Doe* d. *Parker* v. *Thomas* (1842), 3 Man. & G. 815 ; and see *Fitch* v. *Stuckley* (1594), 4 Co. Rep. 23 a ; *Randfield* v. *Randfield* (1860), 1 Drew. & Sm. 310, reversed (on the facts only) on appeal (1863), 8 Jur. (N.S.) 161 ; and see p. 98, *post*.

(*i*) *Doe* d. *Blacksell* v. *Tomkins* (1809), 11 East, 185 ; *Doe* d. *Baverstock* v. *Rolfe* (1838), 8 Ad. & El. 670 ; *Rider* v. *Wood* (1855), 1 K. & J. 644 ; see p. 96, *post*.

(*k*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6.

(*l*) *Pickersgill* v. *Grey* (1862), 30 Beav. 352; and see *Stansfield* v. *Habergham* (1804), 10 Ves. 282.

(*m*) Watkins on Copyholds, Vol. I., p. 254.

(*n*) 40 & 41 Vict. c. 33 ; see title REAL PROPERTY AND CHATTELS REAL.

(*o*) *Doe* d. *Welsh* v. *Langfield* (1847), 16 M. & W. 497. According to the custom of the manor of Manley, in Devonshire, which is appendant to a rectory, a grant of copyholds for lives in reversion will only be good if it fall into possession during the life of the lord who made the grant (*R.* v. *Venn* (1875), L. R. 10 Q. B. 310).

SECT. 2. Nature of the Tenant's Estate.

Where a reversionary estate is granted to a man, who holds for his life, during the lives of two others who are stated to have been admitted tenants in reversion, the grantee, and not the two *cestuis que vie*, takes the legal estate in reversion (*p*).

SUB-SECT 8.—*Curtesy.*

Curtesy only by special custom.

201. If the husband of a copyholder survives his wife, he may, but only by special custom, have an estate by the curtesy in her copyholds. But the nature of his estate is regulated entirely by the custom of the manor (*q*), so that, for instance, his right to an estate by the curtesy may or may not be conditional upon the birth of issue to himself by his wife (*r*). Again, according to special custom, he may have his curtesy either in the whole of his wife's copyholds, in which case he becomes tenant to the lord immediately upon his wife'sdeath, or in a portion only, in which case, upon his portion being assigned to him, he becomes, as from the date of assignment, tenant, not to the lord, but to the person who succeeds by descent to the wife's copyholds (*s*). If the wife become entitled to the copyholds by descent, her death before her admittance will not deprive the husband of his curtesy (*t*).

Where by the custom of the manor an estate by the curtesy is allowed of the legal estate in customary or copyhold lands, a similar estate will be also allowed of an equitable estate in those lands (*u*).

SUB-SECT. 9.—*Dower or Freebench.*

Dower or freebench only by special custom.

202. The wife of a copyholder who survives her husband may, by special custom only of the manor, have an estate in dower or freebench, as it is usually called, in his copyholds. But the nature of her estate is regulated entirely by the custom of the manor (*a*). In some cases the customs of the manor have been settled by Act of Parliament (*b*).

Nature of right to freebench.

The customs differ widely in various manors, so that a widow may have her freebench in the whole or only in part of her husband's lands, or in the rents and profits only of those lands, and those lands may be all the copyhold lands of the manor of which her husband was seised as tenant at any time (*c*) during the marriage, or only those of which he was seised at his death (*d*).

(*p*) *Right* d. *Wells* (*Dean*) v. *Bawden* (1803), 3 East, 260.

(*q*) Watkins on Copyholds, Vol. II., p. 73 ; *Brown's Case* (1581), 4 Co. Rep. 21 a, b.

(*r*) *Ibid.*, p. 74.

(*s*) *Ibid.*, pp. 73, 74 ; *Ewer* v. *Astwike* (1589), And. 192.

(*t*) *Doe* d. *Milner* v. *Brightwen* (1809), 10 East, 583.

(*u*) Watkins on Copyholds, Vol. II., pp. 65, 66 ; 2 Bl. Com. 337 ; *Chaplin* v. *Chaplin* (1733), 3 P. Wms. 229. Except possibly in the case of executory trusts ; see *Re Hudson, Cassels* v. *Hudson*, [1908] 1 Ch. 655. As to the law of dower and curtesy generally, see title HUSBAND AND WIFE.

(*a*) *Ibid.*, p. 59 ; *Brown's Case, supra ; Shaw* v. *Thompson* (1595), 4 Co. Rep. 30 b.

(*b*) As, for instance, in the case of the manor of Cheltenham, settled by private statute (1 Car. 1, c. 1) ; see *Doe* d. *Riddell* v. *Gwinnell* (1841), 1 Q. B. 682.

(*c*) But not in the case of mere momentary seisin ; see *Sneyd* v. *Sneyd* (1738), 1 Atk. 442.

(*d*) Watkins on Copyholds, Vol. II., p. 69 ; and see p. 79, *post.*

Further, a widow's right to freebench, or the quantity or value of her interest therein, may depend upon whether she was the first, second, or third, or subsequent wife of her late husband (*e*). Again, according to custom, her estate in freebench may be in fee for her life, or widowhood, or chaste widowhood (*f*).

In order to prove that by the custom a widow holds only during chaste widowhood it is not necessary to prove instances of forfeiture for incontinence, but the custom may be proved by means of recitals in admittances of persons whose estates commenced upon the determination of a widow's estate (*g*).

A custom that the widow of a tenant in fee may have freebench will extend to the widow of a tenant in tail (*h*). In some manors where the husband holds for life only, his widow is nevertheless entitled to freebench in the whole of his lands so held (*i*).

In what cases freebench arises.

203. As a general, but not invariable, rule, the wife of a copyholder has no title to freebench merely by reason of her marriage, as she has in the case of ordinary freeholds, but is only entitled in the event of her husband being seised of copyholds at the time of his death, so that the widow's right may be barred by any destruction of the seisin prior to his death (*j*). In such a case a devise of copyholds by the husband is sufficient to bar his widow's freebench in the lands devised (*k*). Copyholds are not, however, affected by the Dower Act, 1833 (*l*).

Where a copyholder contracts for valuable consideration to sell his copyholds to his son and dies before surrender, the widow will be compelled to surrender her freebench in favour of the son (*m*), and where a mortgagor has covenanted to surrender mortgaged copyholds to his mortgagee, and the mortgagee forecloses, the widow is barred of her right to freebench (*n*). So a lease for years by the husband with the licence of the lord is sufficient to defeat the widow's freebench (*o*); and, in general, where the wife's title to freebench does not arise until the moment of her husband's death, any act for valuable consideration by him will bar her right (*p*). Thus, if a husband surrenders for value, but dies before the admittance of the purchaser, the widow is barred of her freebench (*q*). But, except by special custom, a widow of a copyholder will not be deprived of her freebench where her right has by custom attached prior to her husband's death by her husband alienating the lands

(*e*) Watkins on Copyholds, Vol. II., p. 69.
(*f*) *Ibid.*, p. 70; *Chantrell* v. *Randall* (1661), 1 Lev. 20.
(*g*) *Doe* d. *Askew* v. *Askew* (1809), 10 East, 520.
(*h*) *Doe* d. *Norfolk* (*Duke*) v. *Sanders* (1783), 3 Doug. (K. B.) 303.
(*i*) Watkins on Copyholds, Vol. II., p. 62; *Chantrell* v. *Randall, supra.*
(*j*) *Willis* v. *Willis* (1865), 34 Beav. 340.
(*k*) *Lacey* v. *Hill* (1875), L. R. 19 Eq. 346.
(*l*) 3 & 4 Will. 4, c. 105; *Powdrell* v. *Jones* (1854), 2 Sm. & G. 407.
(*m*) *Hinton* v. *Hinton* (1755), 2 Ves. Sen. 631.
(*n*) *Brown* v. *Raindle* (1796), 3 Ves. 256.
(*o*) *Salisbury* d. *Cooke* v. *Hurd* (1776), 2 Cowp. 481.
(*p*) *Brown* v. *Raindle, supra.*
(*q*) *Vaughan* d. *Atkins* v. *Atkins* (1771), 5 Burr. 2764.

SECT. 2. Nature of the Tenant's Estate.

during his life without his wife having been examined in court as to her consent or joined in the alienation (*r*).

A surrender by the wife during the lifetime of her husband, and with his privity, may be effectual to bar her freebench if so intended (*s*).

Where no freebench.

204. Apart from special custom, a woman cannot have freebench in a reversionary interest in copyholds even though by arrangement her husband had been let into actual possession of the land (*t*). A widow cannot have freebench out of an equitable estate in customary freeholds (*a*), nor out of a trust estate in copyholds (*b*); but the fact that prior to his death her husband had not been admitted to copyholds to which he had succeeded as heir will not deprive a widow of her freebench therein (*c*).

Priority.

205. A widow's freebench has priority over her deceased husband's debts (*d*).

Widow's remedy.

206. Where a widow is entitled to freebench out of a portion only of her husband's lands, but she is unable to obtain an assignment of such portion, her remedy was formerly by plaint (*e*) in the lord's court, but is now by action in the Chancery Division of the High Court (*f*).

SUB-SECT. 10.—*Guardianship.*

Appointment of guardian.

207. The right to appoint and the person to be appointed guardian of an infant copyholder in respect of his copyhold lands depend upon the custom of the manor where any such custom exists (*g*). Where no such custom exists, or such custom as there may be does not completely cover the circumstances of the case, the statutes relating to guardians (*h*) will operate so as to make good the deficiency, but not so as to override the custom (*i*).

Duties of guardians.

208. The duties of a guardian are to manage the ward's land, and keep it in a proper state of cultivation and repair, and to sue for arrears of rent, if any, and to grant leases of the land during the

(*r*) *Riddell* v. *Jenner* (1833), 10 Bing. 29; and see *Powdrell* v. *Jones* (1854), 2 Sm. & G. 407, where the wife's right could only be barred by her own surrender, even though her husband had been admitted in fee on a surrender to uses to bar dower.

(*s*) *Wood* v. *Lambirth* (1841), 1 Ph. 8.

(*t*) *Smith* v. *Adams* (1854), 18 Beav. 499.

(*a*) *Godwin* v. *Winsmore* (1742), 2 Atk. 525.

(*b*) *Forder* v. *Wade* (1794), 4 Bro. C. C. 521.

(*c*) *Vaughan* d. *Atkins* v. *Atkins* (1771), 5 Burr. 2787.

(*d*) *Spyer* v. *Hyatt* (1855), 20 Beav. 621.

(*e*) Watkins on Copyholds, Vol. II., p. 72; *Chapman* v. *Sharpe* (1682), 2 Show. 184; *Shaw* v. *Thompson* (1595), 4 Co. Rep. 30 b; Kitchin on Courts Leet, 2nd ed. (1653), p. 103 b.

(*f*) See *Dormer* v. *Fortescue* (1744), 3 Atk. 130. The action will be framed on analogy to an action of assignment of dower in ordinary freeholds; see title HUSBAND AND WIFE.

(*g*) *Egleton's Case*, 2 Roll. Abr. 40.

(*h*) 12 Car. 2, c. 24 (1660), ss. 8–10; Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27). As to the effect of both these Acts, see title INFANTS AND CHILDREN.

(*i*) *Church* v. *Cudmore* (1691), 2 Lut. 1181; see also *R.* v. *Wilby* (*Inhabitants*) (1814), 2 M. & S. 504.

ward's minority where such leases are authorised by custom (*j*). The guardian must also perform any agricultural services there may be due to the lord, as ploughing the lord's land on the day or days appointed; but the guardian cannot perform any of the personal services due from the ward in the lord's court or swear fealty (*j*). The ward must do these services himself, unless for some good reason he is unable, in which case his guardian may appear as his attorney to essoign for him, *i.e.*, to allege his excuses (*k*).

Admittance.

209. By statute (*l*) the guardian of an infant under twenty-one may appear at the lord's court, and offer himself to be admitted, and take admittance on behalf of an infant copyholder, and may enter into the infant's copyholds, and may reimburse himself out of the rents, issues, and profits thereof for payments made to the lord for any fines upon such admittance legally imposed, and for any costs and charges which the lord may have incurred (*l*). But where an infant takes admittance by his guardian, the infant, and not the guardian, is the tenant to the lord (*m*).

Forfeiture.

210. An act or omission which, if done by a copyholder of full age, would lead to a penalty or forfeiture, will not do so if done or omitted by the guardian of an infant copyholder, but will result in the forfeiture by the guardian of his office (*n*).

SUB-SECT. 11.—*Trust Estates.*

Position of lord.

211. In the absence of special custom, the lord cannot be compelled to accept a surrender of copyholds which on the face of it imposes trusts upon the legal estate (*o*), but by custom manorial lands may be surrendered in trust (*p*). And, of course, trusts may be undertaken by, and will become enforceable against, a copyholder; and where the lord in fact admits a tenant upon a surrender clearly referring to certain trusts in a certain indenture, the lord has notice of the trusts, and cannot claim against them (*q*).

Wills.

Trusts may be declared by will, and when any trusts are so declared it is not necessary to enter the declaration of such trusts, but sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by the will (*r*).

Reimbursement of trustees.

Where copyholds are devised to trustees, they have a right to reimburse themselves money expended by them in payment of fines and fees on admittance (*s*).

(*j*) Watkins on Copyholds, Vol. II., p. 81.
(*k*) *Ibid.*, p. 83.
(*l*) Infants' Property Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 65), ss. 3, 8.
(*m*) Watkins on Copyholds, Vol. I., p. 334.
(*n*) *Ibid.*, p. 411; Vol. II., p. 83; Coke, The Compleat Copy-holder (1673), s. 59; and see p. 49, *ante*.
(*o*) *Flack* v. *Downing College, Cambridge* (*Master*) (1853), 13 C. B. 945.
(*p*) *Snook* v. *Mattock* (1836), 5 Ad. & El. 239; and see p. 91, *post*.
(*q*) *Weaver* v. *Maule* (1830), 2 Russ. & M. 97; *R.* v. *Oundle* (*Lord of the Manor*) (1834), 1 Ad. & El. 283; and see p. 91, *post*.
(*r*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), ss. 3, 5.
(*s*) *Creaton* v. *Creaton* (1856), 3 Sm. & G. 386.

SECT. 3. Creation of the Tenant's Estate.

SECT. 3.—*Creation of the Tenant's Estate.*

SUB-SECT. 1.—*By Grant.*

Creation by grant.

212. The creation of copyhold tenure was originally by grant from the lord of the manor to the tenant, and has been defined as a gift by the lord to another person of a certain portion of his demesnes to be held by copy of court roll at the will of the lord according to the custom of the manor under the usual services and returns (*t*).

A grant is usually effected by a gift or delivery of seisin of the lands to be granted to the grantee by the rod (*a*), to hold to the grantee and his heirs by copy of court roll at the will (*b*) of the lord according to the custom of the manor by the same rents and services as the same lands had been theretofore held or might by custom be held. Fealty is now always respited (*c*).

In making a grant the custom of the manor must be most strictly observed as to the nature and extent of the rents and services to be reserved by the grant, for otherwise the whole grant will be vitiated (*d*).

Classification of grants.

Grants are of two kinds, namely, (1) grants made pursuant to a surrender, in which case the lord, by making a grant, merely performs a judicial act, no estate passing from him to the grantee (*e*); and (2) voluntary grants, that is to say, grants made otherwise than upon a surrender, as, for instance, upon escheat, in which case an estate passes from the lord to the tenant, but only such an estate as is allowed by the custom of the manor (*f*). A grant, whether voluntary or upon a surrender, will operate by way of estoppel as against the lord and all claiming under him (*g*).

Copy of court roll evidence of grant.

The copy of court roll is the evidence always accepted that the grant has been duly made and recorded on the court rolls (*h*).

Who may grant.

213. Any lord for the time being, whether lord by right or not, may perform the judicial act of granting admittance upon a surrender without invalidating the title of the tenant so admitted, but this is not so in the case of a voluntary grant, which will only be good if done by a lord having sufficient capacity (*i*). For instance, the voluntary grant of an heir, where the right is really in a

(*t*) Watkins on Copyholds, Vol. I., p. 29.

(*a*) The "rod" is merely a symbol. See also Williams on Seisin (1878), p. 43.

(*b*) The words "at the will of the lord" are usually omitted in the case of customary freeholds; see p. 67, *ante*.

(*c*) Watkins on Copyholds, Vol. I., p. 68.

(*d*) *Ibid.*, p. 67; Coke, The Compleat Copy-holder (1673), s. 41; *Harris* v. *Jays* (1599), Cro. Eliz. 699, 700; 2 Bl. Com. 370. But as to rents and heriots, see *Doe* d. *Leach* v. *Whitaker* (1834), 5 B. & Ad. 409, 428.

(*e*) Watkins on Copyholds, Vol. I., p. 29.

(*f*) *Ibid.*, p. 30; see *Re London and South Western Railway Act*, 1856, *Ex parte Henley* (*Lord*) (1860), 29 Beav. 311.

(*g*) Watkins on Copyholds, Vol. I., p. 65; *R.* v. *Haddenham* (*Inhabitants*) (1812), 15 East, 463, *per* Lord ELLENBOROUGH, C.J., at p. 469; *Keats* v. *Hewer* (1864), 11 L. T. 290, C. A.

(*h*) Watkins on Copyholds, Vol. II., p. 38; *Snow* v. *Cutler* (1663), 1 Keb. 567; and see p. 17, *ante*.

(*i*) Watkins on Copyholds, Vol. I., p. 34.

dowress, will not be good as against her (*j*). Nor will a grant made by an heir pending the assignment to the widow of his ancestor of her dower be good against her (*j*). So also the grant of a tenant *pur autre vie* made after the death of *cestui que vie* will not be good as against the reversioner (*k*). But a grant by an heiress made between her ancestor's death and the birth of an heir will be good against the heir, the latter being *en ventre sa mère* at the time of the ancestor's death (*l*).

It has been said that by special custom the lessee of a manor may grant by copy of court roll in reversion upon the determination of the estates of existing copyholders for lives or years (*m*).

When lord under disability.

214. Provided his title to the manor be good, the lord may make a valid voluntary grant of copyholds whether he be an infant or a lunatic, since the law regards neither the quality of his person nor the quantity of his estate (*n*).

In the case of a married woman lady of a manor, her voluntary grant will be good without the co-operation of her husband if she was married on or after the first day of January, 1883 (*o*), but if she was married before that date, such grant, without the concurrence of her husband, will only be good if her title to the manor accrued on or after the first day of January, 1883 (*p*). If, however, her title to the manor accrued before that date, her voluntary grant must be made jointly with her husband, for neither of them alone can make a valid grant (*q*).

An executor may make good voluntary grants of copyholds if empowered by the will to do so (*r*).

Where the lords of the manor are joint tenants, they may make grants either jointly or severally, for they each hold *per mie et per tout* (*s*). But tenants in common must all join in making a grant (*a*).

Validity of grant.

215. Whether the grant be upon a surrender or voluntary, the estate granted is not derived out of the lord's estate, but stands upon the custom of the manor which is paramount to the estate of the lord, and therefore, so long as the grant is made according to the custom, it will remain good after the lord's estate has ceased (*b*).

(*j*) Watkins on Copyholds, Vol. I., p. 34; Coke, The Compleat Copy-holder (1673), s. 35; Co. Litt. 58 b, note (6).

(*k*) Watkins on Copyholds, Vol. I., p. 35; *Rous* v. *Artois* (1587), 2 Leon. 45; *Dillon* v. *Fraine* (1589), Poph. 70; *Osborn* v. *Carden* (1565), 1 Plowd. 293.

(*l*) Watkins on Copyholds, Vol. I., p. 33.

(*m*) *Ibid.*, p. 57. But the point is doubtful.

(*n*) Co. Litt. 9 a; Watkins on Copyholds, Vol. I., p. 30.

(*o*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 2. As to grants by married women generally, see title HUSBAND AND WIFE.

(*p*) *Ibid.*, s. 5.

(*q*) Watkins on Copyholds, Vol. I., p. 32; *Shopland* v. *Ryoler* (1605), Cro. Jac. 98.

(*r*) *Ibid.*, p. 31; Co. Litt. 58 b.

(*s*) Watkins on Copyholds, Vol. I., p. 32; Coke, The Compleat Copy-holder (1673), s. 34; but see the *dictum* to the contrary in *Lancaster* v. *Lucas* (1590), 1 Leon. 233. On similar grounds it is presumed that coparceners may make grants in the same manner.

(*a*) *Hurlestone's Case* (1580), Dyer, 377 a.

(*b*) *Doe* d. *Rayer* v. *Strickland* (1842), 2 Q. B. 792.

SECT. 3. Creation of the Tenant's Estate.

So where the lord of a manor is a corporation sole, as, for instance, a bishop, prebendary, or parson, his grant will be good as against his successors and the Crown (*c*).

In taking a grant of copyholds from the lord, the tenant is bound to satisfy himself that the person making the grant is in fact lord of the manor, and that the grant is made in accordance with the custom of the manor; but he is not bound to inquire whether the lord is tenant for life of the manor or tenant *pur autre vie* or in tail (*d*).

Rules as to making of grant.

216. Where a lord may grant land to hold by copy of court roll, or by any customary tenure, the grant may be made out of the manor, and without holding a court, and either by the lord, or steward, or deputy steward, provided that where by the custom of a manor the lord is authorised, with the consent of the homage, to grant any common or waste lands to hold by copy of court roll, the lord must not make the grant without the consent of the homage assembled at a customary court (*e*). For the purpose of making voluntary grants the steward must be steward by right, but where his act is ministerial merely, as when making a grant of admittance pursuant to a surrender, it will be enough if he be steward *de facto* (*f*).

Where the lord may make a valid grant, he may do so by attorney (*g*).

The bailiff of a manor has no power by virtue of his office to make grants by copy of court roll (*h*).

A power to grant by copy of court roll may be given by Act of Parliament (*i*).

A grant may contain a declaration of trust (*k*).

What lands may be granted.

217. Manorial lands that have from time immemorial been granted by copy of court roll may continue to be so granted (*l*), and it is immaterial that the lord may in the meantime have retained them in his own hands upon an escheat for any length of time, provided that in the meantime he has not alienated them for a common law interest (*m*).

Where copyholds have been seized for a forfeiture and regranted with appurtenances, right of common formerly appurtenant will pass by the grant (*n*).

(*c*) Watkins on Copyholds, Vol. I., p. 32; *Brown's Case* (1581), 4 Co. Rep. 21 b. As to corporations sole, see title CORPORATIONS, p. 305, *post*.

(*d*) *Re Medows, Norie* v. *Bennett*, [1898] 1 Ch. 300.

(*e*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 83.

(*f*) Watkins on Copyholds, Vol. I., p. 35; Gilbert on Tenures, p. 410; *Harris* v. *Jays* (1599), Cro. Eliz. 699; and see p. 62, *ante*.

(*g*) *Doe* d. *Leach* v. *Whitaker* (1834), 5 B. & Ad. 409, 435.

(*h*) Watkins on Copyholds, Vol. I., p. 36. As to the bailiff, see p. 65, *ante*.

(*i*) *Ibid.*, p. 46; *Revell* v. *Jodrell* (1788), 2 Term Rep. 415.

(*k*) *Keats* v. *Hewer* (1864), 11 L. T. 290, C. A. As to trusts of copyholds, see p. 81, *ante*.

(*l*) Watkins on Copyholds, Vol. I., p. 44; Co. Litt. 58 b; *French's Case* (1576), 4 Co. Rep. 31a; *Roe* d. *Newman* v. *Newman* (1760), 2 Wils. 125.

(*m*) See *Re London and South Western Railway Act*, 1856, *Ex parte Henley (Lord)* (1860), 29 Beav. 311.

(*n*) *Badger* v. *Ford* (1819), 3 B. & Ald. 153; and see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 523.

SECT. 3. Creation of the Tenant's Estate.

The fact that the granting of lands by copy of court roll cannot be ascertained for the full period of legal memory will not necessarily invalidate grants of which there is evidence, for the validity of such grants may be presumed (*o*).

Manorial lands which have never before been granted to be held by copy of court roll cannot be granted to be so held without the aid of a custom enabling such lands to be so granted (*p*), and not even where there is such a custom can such a grant be made without the consent of the Board of Agriculture and Fisheries (*q*); and where such a grant is made with such consent, the land so granted will cease to be of copyhold tenure, and will be vested in the grantee thereof to hold for the interest granted as in free and common socage (*r*).

A copyhold estate or interest in a piece of land may consist solely of the *prima tonsura*, or forecrop, whilst every freehold interest may be in someone else (*s*).

Tithes, underwood, and herbage may be granted by copy of court roll (*a*). But the lord may not grant by copy of court roll anything which does not lie in tenure, such as rents, bailiwicks, fairs, commons, advowsons in gross (*b*).

Where copyholds are extinguished by reason of the copyholder acceding to the lordship of the manor, or *vice versâ*, the land may be regranted by the lord by copy of court roll (*c*).

Who may take a grant.

218. A grant of lands to hold by copy of court roll may be made to any person, whether natural-born or an alien (*d*), married (*e*) or single woman, infant (*f*) or adult.

Who may not take a grant.

219. The lord cannot take a grant of copyholds from himself even though he be lessee of the manor (*g*).

The Crown, either personally or as a corporation sole, cannot

(*o*) Watkins on Copyholds, Vol. I., p. 43; *Parrott* v. *Watts* (1877), 37 L. T. 755.

(*p*) Watkins on Copyholds, Vol. I., p. 44; *Revell* v. *Jodrell* (1788), 2 Term Rep. 415; and see *R.* v. *Hornchurch* (*Inhabitants*) (1818), 2 B. & Ald. 189.

(*q*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 81 (1); Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), s. 1.

(*r*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 81 (3). The effect of this provision is to prevent the creation of new copyholds by the lord where formerly he had power to do so. For a full discussion of the subject, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 531 *et seq.*

(*s*) *Stammers* v. *Dixon* (1806), 7 East, 200.

(*a*) Watkins on Copyholds, Vol. I., p. 41; Roll. Abr. 498 A, pl. 1; *Hoe* v. *Taylor* (1595), 4 Co. Rep. 31 b; Co. Litt. 58 b.

(*b*) Watkins on Copyholds, Vol. I., p. 40; Coke, The Compleat Copy-holder (1673), s. 42.

(*c*) Watkins on Copyholds, Vol. I., p. 56; *Hide* v. *Newport* (1583), Moore (K.B.), 185, pl. 330; *French's Case* (1576), 4 Co. Rep. 31 a; *Blemmerttasset* v. *Humberstone* (1621), Hut. 65.

(*d*) Naturalization Act, 1870 (33 Vict. c. 14), s. 2; see title ALIENS, Vol. I., p. 309.

(*e*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75); see title HUSBAND AND WIFE.

(*f*) Watkins on Copyholds, Vol. II., p. 79; see title INFANTS AND CHILDREN.

(*g*) *Christ Church* (*Dean*) v. *Buckingham* (*Duke*) (1864), 10 L. T. 575.

SECT. 3. Creation of the Tenant's Estate.

take a grant of copyholds (*h*). The grant should be made to a trustee for the Crown (*i*).

A corporation aggregate cannot take a grant (*k*).

SUB-SECT. 2.—*By Statute.*

Statutory creation of copyholds.

220. A copyhold estate may be created by statute. Thus, under the Inclosure Act, 1845 (*l*), allotments of land not previously copyhold may become copyhold where the allotments are made in respect of copyholds already existing (*m*).

SECT. 4.—*Transmission of the Tenant's Estate.*

SUB-SECT. 1.—*By Descent or Statute.*

General rule.

221. The legal estate in copyholds and customary freeholds devolves according to the custom of the manor of which they are held; thus, the widow of a deceased copyholder may be his heiress to the entire exclusion of his issue (*n*). Where, however, such custom differs from the course of descent according to the general rules of inheritance, the customary descent must be construed strictly, and not extended beyond the usage prevailing in the manor (*o*). In some manors the customary descent has been settled by Act of Parliament (*p*).

How far common law applies.

222. If the custom of the manor does not clearly provide for the events which happen, the devolution will be according to the rules at common law (*q*), and, unless there is a special custom, no right of representation will be presumed to apply to the customary descent (*r*).

Where a daughter of a tenant for life who has no sons has a contingent interest in remainder expectant on the death of the tenant for life in copyholds descendible according to the tenure of borough English (*s*), and dies in his lifetime without having been admitted, her interest in the copyhold descends to her youngest sister then living and on the subsequent birth of a younger sister

(*h*) Watkins on Copyholds, Vol. I., p. 37. As to the Crown as owner of copyholds, see title CONSTITUTIONAL LAW, Vol. VI., p. 494.

(*i*) Watkins on Copyholds, Vol. I., pp. 299—301; see p. 13, *ante*.

(*k*) *Ibid.*, pp. 37, 299—301; see p. 14, *ante;* and title CORPORATIONS, p. 372.

(*l*) 8 & 9 Vict. c. 118.

(*m*) *Ibid.*, s. 94, extended to cases of exchange by Inclosure Act, 1847 (10 & 11 Vict. c. 111), s. 6.

(*n*) *Locke* v. *Southwood* (1831), 1 My. & Cr. 411, affirmed *sub nom. Bush* v. *Locke* (1834), 3 Cl. & Fin. 721, H. L.

(*o*) *Muggleton* v. *Barnett* (1857), 2 H. &. N. 653, Ex. Ch. Such usage may be supported by evidence of reputation only (*ibid.*). In *Doe* d. *Mason* v. *Mason* (1770), 3 Wils. 63, it was shown that by custom copyholds descended to the youngest nephew of the deceased tenant. As to a customary being evidence of descent, see *Denn* d. *Goodwin* v. *Spray* (1786), 1 Term Rep. 466; as to inheritance generally, see title DESCENT AND DISTRIBUTION.

(*p*) As, for instance, the Manor of Cheltenham (1 Car. 1, c. 1); see *Doe* d. *Riddell* v. *Gwinnell* (1841), 1 Q. B. 682.

(*q*) *Re Smart, Smart* v. *Smart* (1881), 18 Ch. D. 165; *Denn* d. *Goodwin* v. *Spray, supra, per* ASHHURST, J., at p. 474.

(*r*) *Re Smart, Smart* v. *Smart, supra.* Thus, where by custom copyholds descend to the youngest son or daughter, brother or sister, uncle or aunt, and a deceased tenant leaves no one answering these descriptions, but only sons of deceased uncles, the youngest son of the youngest uncle is not entitled to take, since the custom is exhausted, and the heir-at-law is entitled (*ibid.*); see *Locke* v. *Colman* (1836), 1 My. & Cr. 423.

(*s*) As to the custom of borough English, see title DESCENT AND DISTRIBUTION.

shifts to her; but in similar circumstances a like interest in copyholds not descendible according to the tenure of borough English, but descendible by custom of the manor to the youngest son, daughter, or sister of the copyholder last seised, descends, not according to the custom of the manor, but to all her sisters as co-heiresses-at-law (*t*).

Where there is a custom in a manor that when a tenant seised for an estate of inheritance of customary lands dies intestate leaving sisters only the lands descend to the eldest sister alone or to her heir, then, should the eldest sister predecease the tenant, and the heir enter and die without having been admitted, the custom will attach as though the heir had been admitted; but if the tenant's estate be not one of inheritance, but, for example, an estate for the joint lives of himself and another with a tenant right to renewal which the lord is bound to grant, the lands will not descend according to this particular custom, because in this case the heir is not seised on the death of the ancestor, but only on admittance (*a*).

Inheritance Act, 1833.

223. The Inheritance Act, 1833 (*b*), applies to copyhold lands; and therefore the half-blood are entitled to inherit next after any relation in the same degree and his issue of the whole blood where the common ancestor shall be a male, and next after the common ancestor where the common ancestor shall be a female (*c*).

Breaking custom of descent.

224. Where a person seised *ex parte maternâ* surrenders to the use of a mortgagee who takes admittance and on repayment of the loan surrenders again to the use of the mortgagor, the line of descent is broken, and the land will devolve on the heir of the mortgagor (*d*). But where a transaction is mere machinery customary in the manor to enable the tenant to transmit his estate in a particular way, it will be considered as a conveyancing device, and not as constituting a break in the descent (*e*).

The word "descent," besides its strict technical sense as taking an estate by inheritance, may in ascertaining a custom mean a "single step in the scale of genealogy" (*f*).

Executory devise.

225. An executory devise of copyholds following upon a devise of the fee gives no legal or equitable estate therein to the executory devisee, but only a transmissible interest which for the purpose of devolution is governed by the common law, and not by the custom of the manor (*g*).

(*t*) *Rider* v. *Wood* (1855), 1 K. & J. 644.

(*a*) *Doe* d. *Hamilton* v. *Clift* (1840), 12 Ad. & El. 566.

(*b*) 3 & 4 Will. 4, c. 106, s. 1. Before this Act the half-blood were totally excluded from taking by inheritance, but if the brother of the whole blood died without entry, the brother of the half-blood might have inherited as heir to their common father to the exclusion of the sister of the whole blood. It was the entry, and not the admittance, which made a *possessio fratris* of copyholds (Watkins, Law of Descents (1837), p. 71); see title DESCENT AND DISTRIBUTION.

(*c*) Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 9.

(*d*) *Doe* d. *Harman* v. *Morgan* (1797), 7 Term Rep. 103.

(*e*) *Nanson* v. *Barnes* (1869), L. R. 7 Eq. 250. The instance given in this case has been rendered obsolete by the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 3.

(*f*) *Bickley* v. *Bickley* (1867), L. R. 4 Eq. 216.

(*g*) *Mallinson* v. *Siddle* (1870), 39 L. J. (CH.) 426.

SECT. 4. Transmission of the Tenant's Estate.

226. Where the legal estate is in trustees, the equitable estate will descend according to the custom of the manor regulating the descent of the legal estate if the trusts are executed, but if the trusts are executory the equitable estate will descend according to the general rules of inheritance (*h*).

Effect of entry by heir.

227. Upon entry into possession by the heir his right relates back to the time when his legal right accrued so as to enable him to sustain an action for trespass committed in the meantime (*i*).

Devolution by statute.

Conveyancing Acts.

228. Copyhold or customary lands vested solely in any person who died between the 31st December, 1881, and the 16th September, 1887, as tenant on the rolls upon any trust or by way of mortgage, devolved to and became vested in his personal representative in like manner as a chattel real (*k*). Since the latter date such lands devolve on the customary heir of such person (*l*), but dealings with such lands by the legal personal representative of the deceased tenant between the 31st December, 1881, and the 16th December, 1887, are not invalid (*m*).

Trustee Act, 1893.

229. Where a person is absolutely entitled in equity to copyholds held by a sole trustee for him, and the trustee dies intestate and without an heir, the Chancery Division of the High Court of Justice will on petition or summons make a vesting order vesting the copyholds in such person without any surrender or admittance (*n*), and it will not be necessary for the petitioner or applicant, as the case may be, to serve the petition or summons on the lord, as his rights will not thereby be prejudiced (*o*). This power of the High Court may be invoked when a vendor refuses to surrender (*p*).

But the legal estate in copyholds or customary land will not pass under a vesting declaration made pursuant to the Trustee Act, 1893 (*q*), in a deed appointing a new trustee (*r*).

Public Trustee Act, 1906.

Where the Public Trustee (*a*) undertakes the administration of an estate, the gross capital value of which is less than one thousand pounds, copyholds forming part of such estate do not vest in the public trustee but he has in respect of such copyholds the like

(*h*) *Trash* v. *Wood* (1839), 4 My. & Cr. 324; applied in *Re Hudson, Cassels* v. *Hudson*, [1908] 1 Ch. 655 (resulting trust). As to the difference between executed and executory trusts, see title TRUSTS AND TRUSTEES. As to the rules of inheritance, see title DESCENT AND DISTRIBUTION.

(*i*) *Barnett* v. *Guildford* (1854), 11 Exch. 19.

(*k*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 30: *Re Hughes*, [1884] W. N. 53.

(*l*) Copyhold Act, 1887 (50 & 51 Vict. c. 73), repealed and re-enacted by Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 88.

(*m*) *Re Mills' Trusts* (1887), 37 Ch. D. 312.

(*n*) *Re Godfrey's Trusts* (1883), 23 Ch. D. 205; see now Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 34, 26.

(*o*) *Paterson* v. *Paterson* (1866), L. R. 2 Eq. 31.

(*p*) *Rowley* v. *Adams* (1851), 14 Beav. 130; see also *Re Collingwood's Trusts* (1858), 6 W. R. 536; *Re Crowe's Mortgage* (1871), L. R. 13 Eq. 26.

(*q*) 56 & 57 Vict. c. 53.

(*r*) *Ibid.*, s. 12 (3); and see title TRUSTS AND TRUSTEES.

(*a*) Appointed under Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 1; see generally title TRUSTS AND TRUSTEES.

powers as if he had been appointed by the court (*b*) to convey the land (*c*).

SECT. 4. Transmission of the Tenant's Estate.

230. By the Land Transfer Act, 1897 (*d*), land of copyhold tenure or customary freehold, in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant, is not included in the expression "real estate" so as to vest in the personal representative of a deceased tenant on his death; but an equitable estate or interest in copyholds is within the statute, and devolves on the death of the owner on his personal representative (*e*), who is to hold it subject to certain powers, rights, duties, and liabilities as trustee for the persons by law beneficially entitled thereto, and those persons have the same power of requiring a transfer as persons beneficially entitled to personal estate (*f*).

Land Transfer Act, 1897.

231. Where the property of a bankrupt is of copyhold or customary tenure or is any like property passing by surrender and admittance or in any similar manner, his trustee in bankruptcy is not compellable to be admitted to the property, but may deal with it in the same manner as if it had been capable of being, and had been, duly surrendered or otherwise conveyed to such uses as the trustee might appoint, and any appointee of the trustee must be admitted to or otherwise invested with the property accordingly (*g*)

Bankruptcy Act, 1883.

SUB-SECT. 2.—*By Surrender and Admittance.*

232. Customary freeholds may be transferred from one person to another either by surrender followed by admittance thereon, or by deed and simple admittance, or by such other method as the custom of the manor or, in the absence of custom, the rules at common law may prescribe (*h*).

Customary freeholds.

233. Copyholds, being still considered in law to be estates at will, can only be transferred between persons by surrender (*i*) followed by a grant or admittance by the lord to the person who is to be the new tenant. The customary assurance by surrender and admittance is a form merely, but it is indispensable in the case of copyholds (*j*). The right to surrender, whether in or out of court,

Copyholds.

(*b*) Under Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 33.

(*c*) Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 3 (2) (b), applying Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 34. As to which see *supra*.

(*d*) 60 & 61 Vict. c. 65.

(*e*) *Re Somerville and Turner's Contract*, [1903] 2 Ch. 583.

(*f*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 2 (1); see generally title REAL PROPERTY AND CHATTELS REAL.

(*g*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 50. As to the powers of a trustee in bankruptcy over estates tail belonging to a bankrupt, see p. 73, *ante;* as to the general law of bankruptcy as affecting the bankrupt's land, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 87, 152 *et seq.*

(*h*) *Phillips* v. *Ball* (1859), 29 L. J. (C. P.) 7.

(*i*) A surrender has been defined as "the yielding up of an estate by the tenant to the lord as a means of conveying or transferring it to another" (Watkins on Copyholds, Vol. I., p. 75).

(*j*) Watkins on Copyholds, Vol. I., p. 70. As to conveyance of a rent by surrender and admittance being bad in law, but aided in equity as evidence of an agreement for sale, see *Spindlar* v. *Wilford* (1686), 2 Vern. 16. For forms of surrender and admittance, see Encyclopædia of Forms, Vol. V., pp. 204 *et seq.*

SECT. 4. Transmission of the Tenant's Estate.

is an incident of copyhold tenure, and requires no special custom to be alleged in support of it or presentment to publish it. The surrender is immediately enrolled to record it on the court rolls (*k*).

If there is no custom to surrender, there must be some mode of disposition by deed, in default of which the High Court will supply a method (*l*). Where it is just and equitable that a surrender should be supplied to support an admittance, the High Court will supply it (*m*). A covenant to surrender not followed by a surrender is not equivalent to a surrender so far as the lord is concerned, even though such covenant be presented by the homage (*n*).

Where a copyholder conveyed for value certain copyholds to a corporation under an Act of Parliament and used the form of conveyance prescribed by the Act, but made no surrender, the copyholder only parted with so much of his own interest in the copyholds as was required by the corporation, and, as the latter, being a corporation, would not ordinarily be capable of taking an admittance of copyholds, the copyholder, and on his death his heir, remained tenant on the rolls as trustee for the corporation and the latter was entitled to have the heir admitted (*o*).

Mode of surrender.

234. The mode of surrendering a copyhold tenement is the yielding or returning by the tenant in person, or by attorney, the seisin or possession of the tenement to the lord or his steward, or to certain tenants or other persons, according to the custom of the manor, by redelivering or returning the symbol of seisin by which he was admitted as a relinquishment of the premises and, if the surrender is not intended to be for the immediate benefit of the lord, at the same time designating the person who is to be instituted into the tenancy. The surrender is noted by an entry on the court roll of the manor (*p*).

The use of the word "surrender" is not essential to effect the relinquishment of the tenant's estate, but any words manifesting an intention to surrender will operate as such, provided that the rights of third parties are not prejudiced (*q*), and provided that the words are not spoken out of court to a person not authorised to accept surrenders out of court (*r*).

A surrender must contain a particular description of the tenement

(*k*) Watkins on Copyholds, Vol. I., pp. 100, 102; Co. Litt. 59 a; *Dudfeild* v. *Andrews* (1689), 1 Salk. 184.

(*l*) *Church* v. *Munday* (1808), 15 Ves. 403; and see *Pike* v. *White* (1791), 3 Bro. C. C. 286.

(*m*) *Rodgers* v. *Marshall* (1809), 17 Ves. 294; *Taylor* v. *Wheeler* (1706), 2 Vern. 564 (presentment out of time).

(*n*) *R.* v. *Hendon* (*Lord of the Manor*) (1788), 2 Term Rep. 484. As to an injunction at the suit of the purchaser against his vendor, see *Spiller* v. *Spiller* (1819), 3 Swan. 556.

(*o*) *Dimes* v. *Grand Junction Canal* (1852), 3 H. L. Cas. 739. The difficulties which arose would now be obviated in cases falling within the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

(*p*) Watkins on Copyholds, Vol. I., p. 73. Originally a surrender was made by act or statement by the surrenderor, but it has become usual to speak of the written memorial of the fact of surrender as being the surrender itself. Apart from the entry on the court rolls, there is no necessity for a surrender to be in writing.

(*q*) *Ibid.*, p. 76.

(*r*) *Ibid.*, p. 78.

to be surrendered. A general surrender or one which refers to a previous surrender in which the tenement is particularly described cannot be forced on either the lord or the steward (*s*).

A surrender as a means of conveyance contains the limitations of the estate which the surrenderee is to take. It must conform to the tenure and the custom, for it is subservient to both, and cannot vary or alter either (*t*).

235. The uses upon which copyholds are held may be indorsed by the steward on the surrender. They need not be entered on the court rolls (*u*). Uses and trusts.

The Statute of Uses (*w*) has no application to copyholds, and there is no rule of law affecting copyholds analogous in effect to that statute (*x*). The term "use" as applied to copyholds is merely a phrase indicating the nominee of the person surrendering. It bears no analogy to the common law use (*y*).

An estate in fee simple may be limited on a fee simple provided it be by way of condition, but if it be by way of a future, springing, shifting, or secondary use, it will be bad (*z*).

There may be an immemorial custom to surrender lands in trust (*a*).

Apart from the general custom that a copyholder may surrender to the use of his will and apart from the fact that he may devise copyholds directly under the Wills Act, 1837 (*b*), so that in either case uses, trusts, and powers may be declared with respect to the copyholds, a tenant cannot without a special custom compel his lord to take a surrender of copyholds burdened with trusts or containing powers of appointment (*c*), though, if the lord in fact accept such a surrender, he cannot afterwards repudiate it (*d*).

236. A surrender of copyholds is to be construed strictly as a feoffment or common law conveyance, and not with the leniency allowed in the case of a will (*e*), unless there is a clear custom to the contrary (*f*). Where, upon treaty for a marriage, copyholds belonging to both parties are surrendered to the use of both and the survivor of them, and the intended husband dies before marriage, the intended wife, who has entered, will be held to be a trustee for the heir of the intended husband, and will be ordered to account for the profits (*g*). Effect of surrender.

(*s*) *R.* v. *Bishop's Stoke* (*Lord of the Manor*) (1840), 8 Dowl. 608.
(*t*) Watkins on Copyholds, Vol. I., p. 132; *Brown* v. *Rawlins* (1806), 7 East, 429; *Green* d. *Crew* v. *King* (1778), 2 Wm. Bl. 1211.
(*u*) *Car* v. *Ellison* (1744), 3 Atk. 73.
(*w*) 27 Hen. 8, c. 10 (1535).
(*x*) *Baker* v. *White* (1875), L. R. 20 Eq. 166.
(*y*) Watkins on Copyholds, Vol. I., p. 124.
(*z*) *Ibid.*, p. 264; *Edwards* v. *Hammond* (1683), 3 Lev. 132.
(*a*) *Snook* v. *Mattock* (1836), 5 Ad. & El. 239; and see p. 81, *ante*.
(*b*) 7 Will. 4 & 1 Vict. c. 26.
(*c*) *Flack* v. *Downing College* (*Master etc.*) (1853), 13 C. B. 945; *Snook* v. *Mattock*, *supra* (special custom).
(*d*) *R.* v. *Oundle* (*Lord of the Manor*) (1834), 1 Ad. & El. 283; and *Weaver* v. *Maule* (1830), 2 Russ. & M. 97 (escheat); and see p. 81, *ante*.
(*e*) *Lovell* v. *Lovell* (1743), 3 Atk. 11.
(*f*) Watkins on Copyholds, Vol. I., p. 145.
(*g*) *Hamond* v. *Hicks* (1686), 1 Vern. 432.

SECT. 4. Transmission of the Tenant's Estate.

A surrender of the share of one of several joint tenants in reversion of copyholds to the intent that the lord should regrant to the use of the will of a third person who survives the surrenderor does not operate as a severance of the joint tenancy (*h*).

Where a surrender is made for the purpose of conveying copyholds of inheritance, no estate passes to the lord, but the surrenderor remains tenant for all purposes of service until the surrenderee is admitted (*i*). The lord is not a trustee, but a mere instrument or conduit-pipe through which the lands must be conveyed according to the custom (*k*).

If a tenant make a surrender on condition, and the condition be either broken or not fulfilled according as it is subsequent or precedent, or if the tenant surrender for any less estate than he has in himself, so that a reversion is left in him, and the particular estate determines, then in such cases the surrenderor is in of his old estate, and the lord cannot require him to take a further admittance (*l*).

A surrender cannot have a tortious effect; that is to say, it cannot convey more than the surrenderor had to surrender (*m*). A surrender to bar an estate tail is only an apparent exception to this rule (*n*).

But a surrender by a tenant of a copyhold for life or lives, as distinguished from a copyhold of inheritance, passes to the lord all the interest which the tenant possesses, and no less; and the surrenderee does not take by virtue of the surrender, as in the case of copyholds of inheritance, but by direct regrant wholly from the lord (*o*).

Relation between surrender and admittance.

237. In the case of copyholds or customary lands of inheritance, surrender and admittance are different parts of the same conveyance. The surrender is the substantial part and is effectuated by the admittance, the formal part, which must relate to it. The admittance must be pursuant to the surrender, and consequently must operate as from the date of it. Both together make but one conveyance (*a*).

In the case of a contract to convey copyhold or customary lands which pass by surrender and admittance, the surrender is the substantial part of the conveyance and a complete execution of the contract on the part of the surrenderor. As between himself and the surrenderee, the land is bound by the surrender (*b*); for although, so far as the lord is concerned, the title of the surrenderee is not complete till after admittance, yet, as between the other parties, admittance is a mere form (*c*).

(*h*) *Edwards* v. *Champion* (1853), 3 De G. M. & G. 202.
(*i*) *R.* v. *Mildmay* (*Lady Jane St. John*) (1833), 5 B. & Ad. 254.
(*k*) *George* d. *Thornbury* v. *Jew* (1764), Amb. 627.
(*l*) *Roe* d. *Noden* v. *Griffits* (1766), 4 Burr. 1961.
(*m*) *Doe* d. *Dormer* v. *Wilson* (1821), 4 B. & Ald. 303.
(*n*) Watkins on Copyholds, Vol. I., p. 124.
(*o*) *Ibid.*, p. 71; and see *Anon.* (1691), Freem. (CH.) 118; *Chantrell* v. *Randall* (1661), 1 Lev. 21; and p. 76, *ante*.
(*a*) *Vaughan* d. *Atkins* v. *Atkins* (1771), 5 Burr. 2765, *per* Lord MANSFIELD, C.J., at p. 2786, where the law on the subject of the relationship between surrender and admittance was thoroughly discussed.
(*b*) *Ibid.*
(*c*) *Ibid.*, at p. 2787; *Roe* d. *Noden* v. *Griffits* (1766), 4 Burr. 1961; Watkins on

SECT. 4. Transmission of the Tenant's Estate.

Until the admittance of the surrenderee the surrenderor may maintain an action for trespass, and on his death his tenement will descend to his heir (*d*); and if he has surrendered without consideration, but no admittance has been taken thereon within the time prescribed by the custom of the manor, he may surrender a second time without formally revoking the first surrender (*e*). A surrender for valuable consideration cannot be revoked by the surrenderor (*f*).

As against all persons but the lord, the title of the surrenderee after admittance is perfect from the time of the surrender, and relates back to it. Meanwhile the surrenderor is a trustee for the surrenderee (*g*), who may assign or devise his equitable interest (*h*), though he cannot surrender the legal estate until he has been admitted (*i*). A surrenderee may maintain an action for possession of copyhold land if before the day of the trial he obtain admittance (*k*). But the devisee of an unadmitted devisee cannot maintain such an action, even after admittance, because such admittance has no relation back to the last surrender (*l*).

A surrenderee of a copyhold estate subject to a term of years is an assignee of a reversion within the statute 32 Hen. 8, c. 34 (*a*), and can therefore maintain actions on the covenants in a lease made by his predecessor (*b*); but he is not a tenant for any purpose before admittance (*c*).

Mortgage of copyholds.

238. A mortgage of copyholds is usually effected by the tenant or mortgagor surrendering the lands to be mortgaged in favour of the mortgagee upon condition that the surrender shall be void in the event of the sum secured thereby being paid by a specified date. The condition is specified in the surrender, and upon payment being made satisfaction is noted on the court roll; and if, as usually happens, the mortgagee has taken no admittance on the surrender, the mortgagor being still tenant on the court roll, the

Copyholds, Vol. I., pp. 112, 113. As to the effect of a covenant to surrender followed by admittance without a surrender, see *Wilson* v. *Allen* (1820), 1 Jac. & W. 611.

(*d*) Watkins on Copyholds, Vol. I., p. 119; *Berry* v. *Greene* (1594), Cro. Eliz. 349; *Doe* d. *Vernon* v. *Vernon* (1805), 7 East, 8; *Frosel* v. *Welsh* (1616), Cro. Jac. 403.

(*e*) *Burgoin* v. *Spurling* (1632), Cro. Car. 283. The reason being not that the first surrender was void, but that it had not been perfected by admittance (Watkins on Copyholds, Vol. I., pp. 113, 119; Burton, Compendium of the Law of Real Property, 7th ed., pp. 396, 399). It is doubtful how far this case is an authority in like circumstances occurring since the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), as to which see p 70, *ante*.

(*f*) Coke, The Compleat Copy-holder (1673), s. 39; *Vaughan* d. *Atkins* v. *Atkins* (1771), 5 Burr. 2765, at p. 2787; *Roe* d. *Roden* v. *Griffits* (1766), 4 Burr. 1961; Watkins on Copyholds, Vol. I., p. 112.

(*g*) *Holdfast* d. *Woollams* v. *Clapham* (1787), 1 Term Rep. 600.

(*h*) *Phillips* v. *Phillips* (1832), 1 My. & K. 649; and see Wills Act, 1837 (7 Will 4 & 1 Vict. c. 26), s. 3.

(*i*) *Matthew* v. *Osborne* (1853), 13 C. B. 919.

(*k*) *Doe* d. *Bennington* v. *Hall* (1812), 16 East, 208.

(*l*) *Doe* d. *Vernon* v. *Vernon*, *supra*; and see p. 98, *post*.

(*a*) (1540). See title REAL PROPERTY AND CHATTELS REAL.

(*b*) *Whitton* v. *Peacock* (1834), 3 My. & K. 325.

(*c*) Watkins on Copyholds, Vol. I., p. 307; see p. 97, *post*.

SECT. 4. Transmission of the Tenant's Estate.

transaction is at an end (*d*). Usually the mortgagee gives the steward a warrant to vacate the conditional surrender, and this is entered on the court rolls (*e*).

Where a surrender refers to a separate deed from which it appears that the surrender is made as security for a loan, and that the surrenderee, after the lapse of twelve months, may sell and repay himself out of the proceeds, the deed and surrender together constitute a mortgage, and upon the death of the surrenderor the court will compel the lord to admit his heir (*f*).

The equity of redemption will descend on the death of the mortgagor according to the custom of the manor as though it had been the legal estate (*g*).

A mortgagee who has not been admitted cannot bring ejectment against his mortgagor's tenant unless he can show that the relationship of landlord and tenant exists by express contract between himself and the tenant (*h*).

Foreclosure.

239. A mortgagee before admittance may bring an action for foreclosure, and after decree he may obtain an order for possession (*i*). The usual decree in a foreclosure action where there has been no conditional surrender is that the mortgagor surrender to the mortgagee at the expense of the former (*j*).

Equitable mortgage by deposit.

Copyholds may be mortgaged in equity by the deposit with the mortgagee of the title-deeds relating thereto, including the admittance or copy of court roll (*k*). On foreclosure the mortgagor must pay the costs of all steps necessary for an effectual surrender and admittance in favour of the mortgagee (*l*).

Priorities.

240. Where a mortgagor, having surrendered conditionally in favour of his mortgagee, afterwards sells to a purchaser and surrenders to him absolutely, the admittance of the mortgagee after the admittance of the purchaser, having relation back to a prior surrender, will preserve his priority over the purchaser (*m*). So where copyholds are surrendered conditionally by way of mortgage and again by way of second mortgage, and the second mortgagee is admitted before the first mortgagee, if the latter takes admittance under the surrender to him he has priority over the second mortgagee, because the admittance of the first mortgagee, though later

(*d*) Watkins on Copyholds, Vol. I., p. 146. For a case where copyholds were mortgaged as ordinary freeholds with a covenant for further assurance, see *Spencer* v. *Boyes* (1798), 4 Ves. 370. As to the law of mortgages generally, see title MORTGAGE; and for forms of surrender, Encyclopædia of Forms, Vol. V., pp. 209 *et seq.*; and of admittance, *ibid.*, pp. 221 *et seq.*

(*e*) Watkins on Copyholds, Vol. I., p. 149.

(*f*) *Weaver* v. *Kinglake* (1830), 9 L. J. (o. s.) (CH.) 20.

(*g*) *Fawcet* v. *Lowther* (1751), 2 Ves. Sen. 304.

(*h*) *Rayson* v. *Adcock* (1863), 7 L. T. 747.

(*i*) *Sutton* v. *Stone* (1740), 2 Atk. 101.

(*j*) Seton's Judgments and Orders (1901), 6th ed., p. 1901; and see *Price* v. *Hill* (1761), Dick. 344.

(*k*) *Whitbread* v. *Jordan* (1833), 1 Y. & C. (EX.) 303.

(*l*) *Pryce* v. *Bury* (1853), 2 Drew. 41.

(*m*) *Doe d. Wheeler* v. *Gibbons* (1835), 7 C. & P. 161; and see also *Blenkarne* v. *Jennens* (1708), 2 Bro. Parl. Cas. 278.

in date, has relation back to an earlier surrender (*n*). As the second surrender becomes void upon admittance to the first, except as evidence of a contract, a second mortgage of copyholds may be made by release or grant (*o*).

241. The court rolls are not the only means by which a surrender and presentment thereof by the homage may be proved. A draft of an entry produced from the muniments of the manor and the parol testimony of the foreman of the homage who made such presentment may be sufficient evidence of a surrender and presentment (*p*). An examined copy of the court roll may also be sufficient evidence of a surrender (*q*), and need not be stamped (*r*).

Proof of surrender.

In a proper case, and especially where there have been several subsequent admittances consistent with the title set up, a court of law or equity will presume the fact that a proper surrender was made (*s*).

242. Every surrender and deed of surrender which a lord is compellable to accept or accepts must be entered on the court rolls of the manor, and such entry is as valid for all purposes as an entry made in pursuance of a presentment by the homage (*a*).

Entry on court rolls.

243. A surrender cannot operate by way of estoppel (*b*). Thus, where copyholds are surrendered to the use of a husband and wife for their natural lives and the life of the survivor of them, and from and after the decease of the survivor of them to the right heirs of the survivor for ever, and during their joint lives they, having been admitted jointly, surrender in fee to a purchaser for value, such last surrender does not operate by way of estoppel so as to pass the contingent remainder in fee in the survivor, but only to pass all that the husband and wife then had, namely, a vested estate for their joint lives and the life of the survivor (*c*). So again where the heir apparent of a copyholder makes a surrender in the lifetime of his ancestor and survives him and dies, his heir is not estopped by that surrender from claiming against the surrenderee (*d*).

Estoppel.

244. Where a tenant, having made a voluntary settlement of copyholds, covenants to surrender them to the trustee, but dies without performing such covenant, the costs of a surrender by his executor will be allowed in the executor's accounts, but not the costs of the

Costs.

(*n*) Watkins on Copyholds, Vol. I., p. 148; *Brend* v. *Brend* (1676), Cas. *temp.* Finch, 254; *Horlock* v. *Priestley* (1827), 2 Sim. 75, in which case there was no time fixed by custom within which surrenders should be presented.

(*o*) Watkins on Copyholds, Vol. I., p. 149.

(*p*) *Doe* d. *Priestley* v. *Calloway* (1827), 6 B. & C. 484; see also *R.* v. *Thruscross* (*Inhabitants*) (1834), 1 Ad. & El. 126.

(*q*) *Doe* d. *Cawthorn* v. *Mee* (1833), 4 B. & Ad. 617; but, as to the requirements of the Stamp Act, 1891 (54 & 55 Vict. c. 39); see p. 63, *ante*, and title EVIDENCE.

(*r*) *Doe* d. *Burrows* v. *Freeman* (1844), 12 M. & W. 844; and see *Doe* d. *Garrod* v. *Olley* (1840), 12 Ad. & El. 481.

(*s*) *Wilson* v. *Allen* (1820), 1 Jac. & W. 611, where admittance had been made on a mere covenant to surrender.

(*a*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 85.

(*b*) *Doe* d. *Blacksell* v. *Tomkins* (1809), 11 East, 185.

(*c*) *Doe* d. *Dormer* v. *Wilson* (1821), 4 B. & Ald. 303. As to contingent remainders, see p. 77, *ante*.

(*d*) *Goodtitle* d. *Faulkner* v. *Morse* (1789), 3 Term Rep. 365.

SECT. 4. Transmission of the Tenant's Estate.

admittance of the trustee (*e*). Again, where a vendor has contracted to surrender or procure some person to surrender copyholds to a purchaser, the cost of the surrender to be borne by the purchaser, the costs of proceedings for a vesting order under the Trustee Act, 1893, will be payable by the vendor, and not by the purchaser (*f*).

Who may surrender.

245. No one can make a surrender of copyholds who has not seisin. In other words, only a person who has been admitted tenant, whether in possession, vested remainder, or vested reversion, or an heir after the death of his ancestor, can make a surrender; and an heir cannot surrender before admittance except upon terms of paying the fine which would have been due upon his formal admittance (*g*). So a person entitled to a contingent remainder or an executory interest cannot surrender for want of seisin (*h*).

A trespasser cannot surrender, because he is not a tenant to the lord (*i*).

Married women.

246. A married woman entitled for her separate use or as separate property or estate may surrender her copyholds without the concurrence of her husband (*k*). A surrender by a husband of his wife's copyholds will only bind his interest, if any (*l*).

Where a married woman is not entitled for her separate use or as her separate property or estate, she and her husband together may surrender her copyholds, she being separately examined by the steward or such other person or persons as the custom of the manor may prescribe for the purpose (*m*), or, if her husband consent, she may surrender alone; but such consent must be stated in the surrender, as it will not be presumed as against a person not claiming through such surrender, even though the husband had in fact no beneficial interest in the copyholds surrendered (*n*).

A husband may surrender in favour of his wife, and a wife in favour of her husband, and one joint tenant may surrender to another (*o*).

Infants.

247. A surrender by an infant is voidable by him on attaining his majority, but not void (*p*).

Life estates.

248. Where the only estate allowed by the custom of the manor is an estate for the life of the tenant or for lives *successivé*, the

(*e*) *Clarke* v. *Twyford* (1859), 7 W. R. 538. As to costs of admittance, see p. 106, *post*.

(*f*) *Bradley* v. *Munton* (1852), 16 Beav. 294.

(*g*) Watkins on Copyholds, Vol. II., p. 80; *Gyppen* v. *Bunney* (1596), Cro. Eliz. 504.

(*h*) Watkins on Copyholds, Vol. II., p. 80; and see p. 77, *ante*.

(*i*) *Ibid.*, p. 85; *Kren* v. *Kirby* (1675), 2 Mod. Rep. 32.

(*k*) Watkins on Copyholds, Vol. I., p. 89; *Compton* v. *Collinson* (1788), 2 Bro. C. C. 377; and see Married Women's Property Act, 1882 (45 & 46 Vict. c. 75).

(*l*) Watkins on Copyholds, Vol. I., p. 92.

(*m*) *Ibid.*, p. 89.

(*n*) *Doe* d. *Shelton* v. *Shelton* (1835), 3 Ad. & El. 265.

(*o*) Watkins on Copyholds, Vol. I., p. 93; *Bunting* v. *Lepingwell* (1585), 4 Co. Rep. 29 a; Coke, The Compleat Copy-holder (1673), s. 35.

(*p*) Watkins on Copyholds, Vol. I., p. 87. *Gooles* v. *Grane* (1593), Moore (K. B.), 597; *Bullock* v. *Dibler* (1593), Poph. 38; *Knight* v. *Footman* (1588), 1 Leon. 95; *Hughs* v. *Carpenter* (1611), Toth. 180.

tenant cannot without special custom transfer his legal estate to another for the residue of his own life, because the effect of his surrender is to annihilate his own estate (*q*).

249. A surrender may be made by attorney, unless the principal is under a disability, such as infancy or lunacy, or is himself an attorney without power of delegation, or unless it is necessary to prove a special custom of the manor to surrender by attorney (*r*). An attorney to surrender copyholds must be appointed by deed (*s*). A statement on the court roll that a surrender was made under a power of attorney is good secondary evidence of the power (*t*).

Surrender by attorney.

Surrender by attorney cannot be demanded, nor can it be forced upon a purchaser against his will, except for sufficient cause shown (*a*). Where copyholds are sold under an order of the High Court, the vendor will be compelled to surrender in person if it can conveniently be done (*b*).

If an attorney exceeds his authority, the excess only is void (*c*).

250. A surrender for the purpose of extinguishing the copyhold tenure will not be good unless made to the lord of the manor *de jure* as well as *de facto* (*d*). But a surrender as a means of conveyance may be made to any person ostensibly lord, steward, or deputy steward in or out of court, out of the manor, and even out of the kingdom, whether the lord's title is good or bad (*e*).

To whom surrender may be made.

By special custom a surrender may be made to the bailiff, beadle, reeve, or certain tenants of the manor (*f*), but only in court, unless the custom provides that such a surrender may be made out of court (*g*); and such a surrender must be made by the tenant in person, unless by special custom he may surrender by attorney (*h*).

Where proceedings are taken for a mandamus to compel the acceptance of a surrender, the lord must be made a party, so that he may be commanded to accept the same (*i*).

251. Admittance is the formal recognition by the lord of a new tenant, and delivery to the latter of the seisin or possession of the

Effect of admittance.

(*q*) Watkins on Copyholds, Vol I., p. 71.

(*r*) *Ibid.*, pp. 93—95; as, for instance, where a surrender can only be made strictly according to the custom, involving a disability to surrender by attorney unless specially allowed.

(*s*) *Ibid.*, p. 95; Co. Litt. 52 a.

(*t*) *Doe* d. *Counsell* v. *Caperton* (1839), 9 C. & P. 112.

(*a*) *Mitchel* v. *Neale* (1755), 2 Ves. Sen. 679.

(*b*) *Noel* v. *Weston* (1821), 6 Madd. 50, the reason being that if done by attorney the purchaser's title would thereby be more difficult of proof.

(*c*) Watkins on Copyholds, Vol. I., p. 97; Coke, The Compleat Copy-holder (1673), s. 41; *Webster* v. *Allen* (1602), Moore (K. B.), 677.

(*d*) Watkins on Copyholds, Vol. I., pp. 71, 101; *Pit* v. *Moore* (1681), T. Jo. 153.

(*e*) Watkins on Copyholds, Vol. I., pp. 101, 102. As to the authority and powers of a steward and his deputy, see pp. 61 *et seq.*, *ante*.

(*f*) *Ibid.*, p. 100; for which purpose an unadmitted heir is a tenant of the manor (*ibid.*, p. 305).

(*g*) *Ibid.*, p. 103.

(*h*) *Ibid.*, pp. 103, 104; Co. Litt., 59 a. For form of letter of attorney, see Encyclopædia of Forms, Vol. V., p. 204.

(*i*) *R.* v. *Whichford* (*Steward of the Manor*) (1839), 8 L. J. (Q. B.) 251.

SECT. 4. Transmission of the Tenant's Estate.

tenement (*j*). It has been defined as the lord's acceptance of a person into the tenancy (*k*). It confers no right upon the tenant, but merely gives the party having a title to the possession the means of obtaining it (*l*). An admittance, however expressed, will enure according to the true title. Thus, if a tenant in tail be admitted in fee, the admittance will operate as an admittance in tail (*m*); and if copyholds have been surrendered by an attorney who has exceeded his authority, the admittance thereupon will be restricted in its operation to the extent authorised by the power (*n*).

A surrenderee of copyholds has, by virtue of the surrender in his favour, a good title against all the world except the lord of the manor before admittance, even though the surrender be conditional, and subsequent admittance has relation back to the time of the surrender (*o*).

Admittance of devisee.

252. If a devisee of an unadmitted devisee be admitted, his admittance has no relation back to the last legal surrender, the legal title to be admitted remaining in the heir of the original devisor (*a*). But where a tenant is admitted under a devise which is bad for want of seisin of the testator, the admittance will yet be good by relation back if the tenant has also a good title, *e.g.* as heir to the tenant last seised, upon which he might have claimed admittance (*b*).

Difference between surrender and grant.

253. Where an admittance to copyholds of inheritance is made on a surrender, the tenant is in by the surrender, but where the admittance is made on a grant of copyholds for lives or a grant of copyholds of inheritance on an escheat or forfeiture of the estate of the old tenant, the new tenant is in by the grant; and in both cases the estate of the new tenant is founded on the custom and derived out of it, and, as the custom is above the lord, the tenant takes free from all charges and incumbrances created by the lord (*c*).

Successive estates.

254. As a general rule, where copyholds are limited to be held by different persons in succession, the admittance of the first or particular tenant enures for the benefit of those in remainder, so

(*j*) Watkins on Copyholds, Vol. I., p. 287. For forms of admittance, see Encyclopædia of Forms, Vol. V., pp. 214 *et seq.*

(*k*) Watkins on Copyholds, Vol. I., p. 309.

(*l*) *Ibid.*, p. 287.

(*m*) *Church* v. *Munday* (1806), 12 Ves. 426.

(*n*) *Carter* v. *Carter* (1857), 3 K. & J. 617; see also note (*c*), p. 97, *ante*.

(*o*) *Vaughan* d. *Atkins* v. *Atkins* (1771), 5 Burr. 2765, 2787; *Roe* d. *Noden* v. *Griffits* (1766), 4 Burr. 1952; *Doe* d. *Wheeler* v. *Gibbons* (1835), 7 C. & P. 161; *Brown* v. *Rawlins* (1806), 7 East, 409, *per* Lord ELLENBOROUGH, C.J., at p. 429; and see pp. 93, 94, *ante*.

(*a*) Watkins on Copyholds, Vol. I., p. 307; *Smith* v. *Triggs* (1721), 1 Stra. 487; and see p. 93, *ante*.

(*b*) *Doe* d. *Winder* v. *Lawes* (1837), 2 Nev. & P. (K. B.) 195, 211.

(*c*) Watkins on Copyholds, Vol. I., p. 343; *Swayne's Case* (1608), 8 Co. Rep. 63 a; *Taverner* v. *Cromwell* (*Lord*) (1584), 4 Co. Rep. 27 a; and see pp. 69, 91, *ante*. As to covenants for title given by a surrenderor running with the land, it is immaterial that the surrender be made after the deed containing those covenants

that they succeed in possession without further admittance (*d*). Yet persons taking by descent or purchase from any such remainderman will require admittance before they can enter into possession (*e*). Thus, for instance, where copyholds are devised to a tenant for life with remainder over to five persons as tenants in common, the admittance of the tenant for life gives separate estates to the tenants in common, and upon a sale by them to a purchaser the latter can only claim admittance upon payment of five sets of fees for five separate admittances (*f*).

Where copyholds are devised to trustees for a term with proviso for cesser, and subject thereto to a tenant for life with remainders over, the admittance of the trustees enures for the benefit of all in remainder (*g*); and again, where a copyholder devises his copyholds to his widow for life and gives his executors power to sell the copyholds after his widow's death, the admittance of the widow enures for the benefit of the purchaser from the executors under an exercise by them of the power of sale, so as to give him a devisable interest in the copyholds (*h*).

By special custom, however, the lord may call upon a remainderman to come in and be personally admitted (*i*); and where such a custom exists it will be extended to cover the case of an executory gift (*k*).

The admittance of a particular tenant will not enure for the benefit of a person entitled to a contingent remainder, and the latter must therefore be personally admitted (*l*).

Failure of conditions.

255. Where a tenant has made a surrender containing limitations of an estate upon condition precedent or subsequent, and the estate so limited either never takes effect or determines by reason of the conditions limited, the surrenderor will not in either case require to be readmitted, because in both cases he will be in of his old estate (*m*).

Reversioner.

256. A reversioner will not need admittance upon his reversionary estate falling into possession, because he will be in of his old estate (*n*).

But should a copyholder in fee devise to one for life without disposing of the remainder, the admittance of the tenant for life

and the covenant pursuant to which the surrender is made; see *Riddell* v. *Riddell* (1835), 7 Sim. 529.

(*d*) *Barnes* v. *Corke* (1691), 3 Lev. 308; and see pp. 30, 34, 77, *ante*.

(*e*) Watkins on Copyholds, Vol. I., p. 338.

(*f*) Each admittance would require a separate stamp (*R.* v. *Eton College* (*Lords of the Manor of Everdon*) (1846), 8 Q. B. 526).

(*g*) *R.* v. *Weedon Beck* (*Lords of the Manor*) (1849), 18 L. J. (Q. B.) 289.

(*h*) *Seaman* v. *Woods* (1857), 24 Beav. 372; and see p. 104, *post*.

(*i*) *Doe* d. *Whitbread* v. *Jenney* (1804), 5 East, 522; *Phypers* v. *Eburn* (1836), 3 Bing. (N. C.) 250.

(*k*) *Randfield* v. *Randfield* (1861), 3 De G. F. & J. 766. As to wills, see *Smith* v. *Glascock* (1858), 27 L. J. (C. P.) 192, and Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), ss. 3—5.

(*l*) See p. 77, *ante*.

(*m*) Watkins on Copyholds, Vol. I., p. 332; *Roe* d. *Noden* v. *Griffits* (1766), 4 Burr. 1952.

(*n*) Watkins on Copyholds, Vol. I., p. 333; *Podger's* (*Margaret*) *Case* (1612), 9 Co. Rep. 104 a.

SECT. 4. Transmission of the Tenant's Estate.

will not enure for the benefit of the testator's heir, who will take by descent in reversion, and not in remainder (*o*).

Separate admittance for each separate tenement.

257. In the absence of special custom, there must be a separate admittance to each separate tenement, whether the tenements have always been separate or, having been one tenement, have become separate, for the court roll and copy must show the title to each (*p*).

If by the custom of the manor every person, other than a customary heir as such, who seeks admittance for the first time as tenant of the manor is liable to a fine on such admittance, but not to any fine upon any subsequent admittance whilst still tenant on the rolls, a person entitled under one disposition to be admitted to more than one tenement is not, in the absence of special custom, entitled to be admitted to such tenements separately in point of time, but must be admitted to all the tenements by one admittance and pay one general fine (*q*).

Where by the custom of the manor a person taking admittance as tenant for the first time pays a relatively larger fine thereon than he would have done had he been already a tenant on the rolls, and a purchaser, intending to purchase lands of the manor of large value, purchases lands of small value first for the express purpose of escaping payment of the larger fine which would otherwise be due on admittance to the lands of larger value, he will nevertheless be entitled to compel admittance to the lands of smaller value in any event, quite apart from the question as to the fine (*r*).

Estoppel.

258. A tenant who has been admitted has thereby acknowledged himself tenant to the lord, and cannot dispute the lord's title to the manor (*s*).

Express admittance.

259. Admittance may be express or implied. An express admittance is by symbolical livery of seisin by the lord, or his steward or deputy steward, to the tenant or his attorney, of a rod, wand, or verge, followed by entry on the court rolls of a memorial to that effect. Formerly fealty to the lord was sworn by the tenant, but it is now invariably respited (*t*). The giving of the rod or customary symbol is the investing the tenant with the possession of the tenement, not the acceptance of his person (*a*).

Implied admittance.

On the other hand, admittance may be implied from any act on the part of the lord which amounts to a consent to the terms of the surrender, as, for instance, if the lord expressly says he agrees to it, or, knowing of the surrender, accepts rent, fine, or fealty from the

(*o*) *R.* v. *Dullingham* (*Lady of the Manor*) (1838), 8 Ad. & El. 858.
(*p*) *Traherne* v. *Gardner* (1856), 5 E. & B. 913; compare p. 30, *ante*.
(*q*) *Johnstone* v. *Spencer* (*Earl*) (1885), 30 Ch. D. 581.
(*r*) *R.* v. *Boughey* (1823), 1 B. & C. 565; *R.* v. *Meer and Forton* (1823), 2 Dow. & Ry. (K. B.) 824. As to the fine payable in such a case, see pp. 27—31, *ante*.
(*s*) *Doe* d. *Nepean* v. *Budden* (1822), 5 B. & Ald. 626.
(*t*) Watkins on Copyholds, Vol. I., p. 321; and see Co. Litt. 61 a.
(*a*) Gilbert on Tenures, pp. 282, 283, 419—421, 430—436.

surrenderee (*b*). Similarly, declaring for a fine against the heir, or swearing him on the homage, will imply his admittance (*c*).

Where by the custom of the manor, confirmed by statute, a surrenderee of copyholds ought to take admittance within three years after surrender, an admittance after the customary period will be good, because the custom is for the benefit of the lord alone and may be waived by him (*d*).

Who may grant admittance.

260. Admittance being only a ministerial act, any person *de facto* lord, steward, or deputy steward, could always grant admittance upon a surrender or descent (*e*), even though at the time the manor belongs to the see of a bishop who has not been either confirmed upon translation or put in possession of his temporalities (*f*). A valid admittance to land of copyhold or customary tenure may now be made—(1) out of the manor; and (2) without holding a court; and (3) without a presentment by the homage of the surrender, instrument, or fact in pursuance of which the admittance is made; and (4) either by the lord, steward, or deputy steward: and any person entitled to admittance may be admitted by his attorney duly appointed, whether orally or in writing (*g*). Every such admittance must be entered on the court rolls (*h*). Entry on the court rolls is, however, no part of an admittance, but follows upon it, and is a record of what has been done (*i*).

Validity of admittance.

Entry on the court rolls.

Proof of admittance.

261. Subject to the requirements of the Stamp Act, 1891 (*j*), being complied with, an admittance may be proved by an examined copy of the court roll without production of the original surrender or memorandum thereof (*k*).

The heir.

262. Where, on the death of the tenant, the heir is entitled to succeed to his estate, the lord may by special custom require him to come in and take admittance. But, it would seem, the special custom will not be good unless it specifies the lord's remedy in the event of disobedience to his summons (*l*). In the absence of such special custom, the heir may refuse to take admittance even though the result may be to deprive the lord of the fine to which he would have been entitled upon such admittance (*m*). Until admittance the lord is trustee for the heir (*n*), and, upon showing a *primâ*

(*b*) *Ecclesiastical Commissioners for England* v. *Parr*, [1894] 2 Q. B. 420, C. A.
(*c*) Watkins on Copyholds, Vol. I., p. 328; and see *Brown* v. *Dyer* (1706), 11 Mod. Rep. 73.
(*d*) *Doe* d. *Warwick* v. *Coombes* (1844), 6 Q. B. 535.
(*e*) Watkins on Copyholds, Vol. I., p. 317; Co. Litt. 58 b; and see p. 62, *ante*.
(*f*) *Doe* d. *Burgess* v. *Thompson* (1836), 5 Ad. & El. 532.
(*g*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 84.
(*h*) *Ibid.*, s. 85 (1).
(*i*) *Ecclesiastical Commissioners for England* v. *Parr*, *supra*.
(*j*) 54 & 55 Vict. c. 39.
(*k*) *Doe* d. *Cawthorn* v. *Mee* (1833), 4 B. & Ad. 617; and see p. 63, *ante*.
(*l*) Watkins on Copyholds, Vol. I., p. 290; Coke, The Compleat Copyholder (1673), s. 41.
(*m*) *Right* v. *Banks* (1832), 3 B. & Ad. 664; *King* v. *Turner* (1833), 1 My. & K. 456.
(*n*) Watkins on Copyholds, Vol. I., p. 303; *Mason* v. *Day* (1711), Gilb. (CH.) 77.

SECT. 4. Transmission of the Tenant's Estate.

facie title, the heir may compel the lord to admit him (*o*). So the surrenderee of an unadmitted heir can compel the lord to admit him, though he may have to wait until the heir has been admitted where the lord can compel that to be done (*p*). Where an heir claims as such to be admitted to a copyhold tenement, he need not tender himself to be admitted at the lord's court if the steward, upon application to him out of court, has refused to admit him (*q*).

Although the heir before admittance (*r*) may maintain an action for trespass or ejectment (*s*) in the common law courts, yet he cannot sit on the homage without admittance (*t*).

Coparceners.

263. Coparceners are entitled to admittance as one person (*u*), and the admittance of one of them will enure for the benefit of all (*a*), and they may acquire each other's interests either by survivorship, or conveyance, or release without further admittance (*b*); but persons taking by descent or conveyance from individual coparceners require fresh admittance (*c*).

Widows etc.

Similarly, any person becoming entitled to copyholds by operation of law, as, for instance, a widow entitled to freebench not requiring assignment, a husband entitled in right of his wife or by the curtesy not requiring assignment, or an executor, may, like the heir, enter before admittance (*d*); but where a widow takes freebench (*e*), or the husband his curtesy (*f*) by assignment, each will require to be separately admitted.

Devisees.

264. If devisees of copyholds under a will disclaim the benefits given them by the will, and decline to come in to take admittance, the heir is entitled to admittance as though no will had been made (*g*). And where copyholds have been devised to trustees who refuse to take admittance, and the beneficiaries sell their interest to a purchaser who takes admittance on a surrender from the heir, the purchaser, notwithstanding that he has got the legal estate from the heir and the equitable estate from the beneficiaries, is in strictness entitled to a release from the trustees of their right to take admittance, notwithstanding the admittance of the heir (*h*).

(*o*) *R.* v. *Dendy* (1852), 22 L. J. (Q. B.) 39; *R.* v. *Brewers' Co.* (1824), 3 B. & C. 172; *R.* v. *Bonsall* (*Lord of the Manor*) (1824), 3 B. & C. 173.

(*p*) Watkins on Copyholds, Vol. I., p. 305; *Brown's Case* (1581), 4 Co. Rep. 21 a; *Morse* v. *Faulkner* (1792), 1 Anst. 11.

(*q*) *Doe* d. *Burrell* v. *Bellamy* (1813), 2 M. & S. 87.

(*r*) Where by the custom of the manor a surrender may be made into the hands of a tenant of the manor, an unadmitted heir is a tenant for that purpose (Watkins on Copyholds, Vol. I., p. 305; *Munifas* v. *Baker* (1661), 1 Keb. 25).

(*s*) Even against a person already admitted (*Doe* d. *Taylor* v. *Crisp* (1838), 8 Ad. & El. 779).

(*t*) *R.* v. *Dullingham* (*Lady of the Manor*) (1838), 8 Ad. & El. 858, 865, 868; and see p. 14, *ante*.

(*u*) *R.* v. *Bonsall* (*Lord of the Manor*), *supra*.

(*a*) Watkins on Copyholds, Vol. I., p. 339.

(*b*) See p. 107, *post*.

(*c*) *Ibid.*, p. 334; Coke, The Compleat Copy-holder (1673), s. 56.

(*d*) Watkins on Copyholds, Vol. I., p. 306; *Hauchet's Case* (1566), 2 Dyer, 251.

(*e*) Watkins on Copyholds, Vol. I., p. 363.

(*f*) *Ibid.*, Vol. II., pp. 73, 74; see pp. 78, 80, *ante*.

(*g*) *R.* v. *Wilson* (1829), 10 B. & C. 80.

(*h*) *Steele* v. *Waller* (1860), 28 Beav. 466.

But trustees ought to clothe themselves with the legal estate in order to effectually execute their trust, and the lord ought not to be deprived of his fine; and therefore the lord is entitled to refuse to admit the infant son and customary heir of a deceased tenant by his guardian where the deceased has devised his copyholds to trustees for the benefit of his family (*i*).

Surrenderee.

265. Every surrender made for the purpose of transmitting, as distinguished from destroying, a copyhold estate must be followed by the admittance of the surrenderee (*k*). Where admittance is required, the lord is compellable to grant admittance according to the designation of the surrenderor (*l*), whether contained in the surrender itself or in some document referred to in the surrender or otherwise (*m*). But the person seeking admittance and the estate to which he seeks to be admitted must be such as the surrenderor would be warranted by the custom and the nature of his own estate in appointing, otherwise the lord cannot be compelled to admit unless he has estopped himself (*n*). Thus, where a tenant for life surrenders to another for the life of that other, the latter cannot compel admittance on such a surrender, because he might outlive the surrenderor (*o*).

The devisee of an unadmitted surrenderee is entitled to be admitted upon payment of all such stamp duties, fees, and sums of money as may be lawfully payable by him in respect thereof (*p*).

Joint tenants.

266. The admittance of one of several joint tenants will enure for the benefit of all (*q*); and any one of them is entitled to be admitted, independently of the question what fine is payable to the lord under the circumstances, as the lord's right to the fine does not arise until after admittance (*r*); and where one of several surrenderees who are trustees offers to take admittance, the lord cannot refuse on the ground that all ought to come in (*s*).

Where joint tenants of copyholds make partition by parol without the assent of the lord, and occupy in severalty, and one of them surrenders to a stranger by general words, the latter is not entitled to admittance to the parcels occupied by his surrenderor

(*i*) *R.* v. *Garland* (1870), L. R. 5 Q. B. 269.

(*k*) *Roe* d. *Cosh* v. *Loveless* (1819), 2 B. & Ald. 453.

(*l*) Watkins on Copyholds, Vol. I., p. 295; *Hayward* v. *Raw and Cruden* (1861), 6 H. & N. 308.

(*m*) *Weaver* v. *Kinglake* (1830), 9 L. J. (o. s.) (CH.) 20 (mortgage); *Weaver* v. *Maule* (1830), 2 Russ. & M. 97; *R.* v. *Oundle* (*Lord of the Manor*) (1834), 1 Ad. & El. 283 (trusts).

(*n*) *Weaver* v. *Maule*, *supra*.

(*o*) Watkins on Copyholds, Vol. I., p. 298.

(*p*) *R.* v. *Wilberton* (*Lady of the Manor*) (1857), 29 L. T. (o. s.) 126, where the court expressed the opinion that the fines payable on the admittance of the devisee are, under s. 4 of the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), payable as a condition precedent to such admittance, in spite of the rule that a fine is not due till after admittance; see p. 28, *ante*.

(*q*) Watkins on Copyholds, Vol. I., p. 338; Kitchin on Courts Leet, 2nd ed. (1653), p. 122 a; *Roe* d. *Ashton* v. *Hutton* (1763), 2 Wils. 162.

(*r*) *R.* v. *Wanstead* (*Lord of the Manor*) (1853), 23 L. J. (Q. B.) 67; and see p. 28, *ante*.

(*s*) *Roe* d. *Ashton* v. *Hutton*, *supra*.

SECT. 4. Transmission of the Tenant's Estate.

in severalty, but must get all the joint tenants to join in a surrender of the whole, and apply to the lord for admittance in severalty (*t*).

Joint tenants after admittance may release to each other without the necessity for a further admittance upon such release (*a*); and where the estate of a deceased joint tenant accrues to a survivor, the latter, being already fully in the seisin, requires no admittance upon such accrual (*b*).

Tenants in common.

267. Tenants in common must be severally admitted, and cannot subsequently acquire each other's interests without further admittance (*c*).

Donee of power of sale or appointment.

268. Where a testator has given his executors a mere power to sell and convey his copyholds, they can exercise the power, and a purchaser from them is entitled to be admitted without the previous admittance of either the executors or the customary heir (*d*). But where there is a custom that in the case of a power of sale given by will in respect of copyholds of the manor the heir or some other person shall be admitted at the full fine, so as to prevent seizure by the lord before the power is executed, this is admittance *quousque*, and ceases at once upon the execution of the power, so that a fresh admittance and fine may be required by the lord (*e*). Again, the donee of a power of appointment over copyholds need not be admitted in order to execute the power, and in such a case the appointee is entitled to be admitted as the surrenderee of the donor of the power, for he takes from the donor, and not from the donee, of the power (*f*).

Purchaser under Settled Land Acts.

269. Where a purchaser of copyhold or customary lands takes a conveyance by deed from a person selling as tenant for life under the Settled Land Acts, he may, on production of such deed to the steward of the manor and on fulfilling all the requirements of the Act, acquire the right to be admitted and be admitted in accordance with such deed without any surrender to his use by the tenant or tenants then on the court rolls (*g*).

Lunatic.

270. Where a lunatic so found by inquisition is entitled to be admitted to copyholds, his committee may appear at one of the

(*t*) *R.* v. *Southwood* (1827), 5 Man. & Ry. (K. B.) 414. As to partition, see p. 69, *ante*.

(*a*) Watkins on Copyholds, Vol. I., p. 340; *Wakeford's Case* (1588), 1 Leon. 102; and see p. 107, *post*.

(*b*) Watkins on Copyholds, Vol. I., p. 334; Coke, The Compleat Copy-holder (1673), s. 56; Kitchin on Courts Leet, 2nd ed. (1653), p. 122 a.

(*c*) Watkins on Copyholds, Vol. I., p. 340; Coke, The Compleat Copy-holder (1673), s. 56.

(*d*) *R.* v. *Wilson* (1862), 3 B. & S. 201; *Holder* d. *Sulyard* v. *Preston* (1769), 2 Wils. 400; and see *Seaman* v. *Woods* (1857), 24 Beav. 372; and p. 99, *ante*.

(*e*) *R.* v. *Corbett* (1853), 1 E. & B. 836; *R.* v. *Copthall* (*Lord of the Manor*) (1853), 1 W. R. 306.

(*f*) *R.* v. *Oundle* (*Lord of the Manor*) (1834), 1 Ad. & El. 283; *Boddington* v. *Abernethy* (1826), 5 B. & C. 776.

(*g*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 20; see p. 108, *post*.

three next courts holden for the manor and offer himself to be admitted in the name and on behalf of the lunatic, and in default of his appearance or acceptance of admittance the lord or his steward may, after three courts duly holden and proclamations made thereat, appoint at any subsequent court a fit person to be attorney for the lunatic for that purpose only, and by that attorney admit the lunatic to be tenant of the land according to such estate as the lunatic is legally entitled to therein (*h*).

Bailiffs.

271. A bailiff should not be admitted, for he is but a receiver of profits (*i*).

Corporation.

272. A corporation aggregate cannot compel admittance, and, it seems, cannot be admitted, because it cannot do homage, and, being immortal, would yield no fines to the lord (*k*). But a person may be admitted as trustee for a corporation (*l*).

Churchwardens and overseers.

Although the Poor Relief Act, 1819 (*m*), enables the churchwardens and overseers of the poor of a parish to hold land, it does not enable them to take admittance to copyholds (*n*).

Termor.

273. A termor may compel admittance (*o*), and on his death his executors or administrators are entitled to admittance for the residue of his interest (*p*).

Right to compel admittance.

274. A person having a right to admittance may compel the lord to admit him notwithstanding that there is a dispute between him and the lord as to the fine to be paid, for the lord's right to the fine does not arise until admittance has been granted (*q*). Neither the lord nor the steward is bound to admit until the stamp duties and steward's fees are discharged (*r*).

Where two parties lay adverse claims in different rights to the same copyhold tenement, the steward may admit them both, and in a proper case the High Court of Justice will grant a mandamus against the lord and the steward to compel such admittance (*s*). If a copyholder seeks to compel the lord to grant admittance, he

(*h*) Lunacy Act, 1890 (53 Vict. c. 5), s. 125; as to the fines payable on such admittance, see *ibid.*, s. 126. As to lunatics, see, generally, title LUNATICS AND PERSONS OF UNSOUND MIND.

(*i*) Watkins on Copyholds, Vol. I., p. 334; Coke, The Compleat Copy-holder (1673), s. 56. As to admittance of guardians, see p. 81, *ante*.

(*k*) Watkins on Copyholds, Vol. I., p. 299; Co. Litt. 66 b; *Tonkin* v. *Croker* (1703), 2 Ld. Raym. 860; compare *Ecclesiastical Commissioners* v. *London and South Western Rail. Co.* (1854), 14 C. B. 743, *per* MAULE, J., at p. 758; and see p. 66, *ante*. It is doubtful whether the same rule applies to a corporation sole.

(*l*) *Ranshaw and Robottom's Case* (1601), Duke on Charitable Uses, p. 135.

(*m*) 59 Geo. 3, c. 12, s. 17.

(*n*) *Re Paddington Charities* (1837), 8 Sim. 629; *A.-G.* v. *Lewin* (1837), 8 Sim. 366.

(*o*) Watkins on Copyholds, Vol. I., p. 302.

(*p*) *Bath (Earl)* v. *Abney* (1757), 1 Burr. 206.

(*q*) *R.* v. *Hendon (Lord of the Manor)* (1788), 2 Term Rep. 484; see p. 28, *ante*.

(*r*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 4; Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 65—68; and see pp. 63, 64, *ante*.

(*s*) *R.* v. *Hexham (Lord of the Manor)* (1836), 5 Ad. & El. 559.

SECT. 4. Transmission of the Tenant's Estate.

must obtain a mandamus (*t*) in the High Court (*u*), even though it be only to enable the applicant to try his right to the copyholds (*w*), unless it is clear that the claimant is statute-barred (*a*).

The High Court will give effect to an appointment of a person to convey copyholds under the Trustee Act, 1893 (*b*), by compelling the lord to admit such person (*c*).

Both the lord and the steward must be made parties to an application for a mandamus directing them to admit to copyholds; and the order thereon must be directed against both (*d*). And where the manor belongs to the Crown and is managed by the Commissioners of Woods and Forests (*e*) an application against the steward alone will be bad (*f*).

Seizure *quousque*.

275. An action by a claimant against the lord of a manor, who has seized *quousque*, to compel admittance to copyholds, is an action for the recovery of land within the meaning of the Real Property Limitation Acts, 1833 and 1874 (*g*); and if not brought within the period prescribed by the Act computed from the date of the seizure, the claimant's right to admittance will be barred (*h*).

Compulsory admittance.

276. In the absence of special custom (*i*), the lord cannot force the surrenderee of a copyhold to come in and take admittance for the purpose of exacting a fine thereon (*k*).

Costs of admittance.

277. Where a settlor has covenanted to surrender copyholds to trustees of a voluntary settlement, but dies without performing the covenant, and the surrender is afterwards made pursuant to the covenant, the costs of the admittance of the trustees are not chargeable against the general estate of the deceased settlor, but must be paid out of the particular trust estate (*l*).

A similar rule holds good in the case of a devise of copyholds in

(*t*) *R.* v. *Ham* (*Lady of the Manor*) (1839), 8 L. J. (Q. B.) 265; *R.* v. *Brewers' Co.* (1824), 2 B. & C. 172 (by heir).

(*u*) See R. S. C., Ord. 53; Crown Office Rules, 1906, r. 49.

(*w*) *R.* v. *Coggan* (1805), 6 East, 431; *Anon.* (1824), 2 L. J. (O. S.) (K. B.) 93; *R.* v. *Hexham* (*Lord of the Manor*) (1836), 5 Ad. & El. 559 (as to two rival claimants); and see Scriven on Copyholds, 7th ed., p. 142.

(*a*) *R.* v. *Agardsley* (*Lord of the Manor*) (1836), 5 Dowl. 19; *Ex parte Phillips* (1836), 1 Har. & W. 660 (heir).

(*b*) 56 & 57 Vict. c. 53, s. 33.

(*c*) *Re Lane* (*George*) *and Irving* (*John*) (1864), 12 W. R. 710.

(*d*) *R.* v. *Whichford* (*Steward of the Manor*) (1839), 7 Dowl. 709.

(*e*) Under Crown Lands Act, 1829 (10 Geo. 4, c. 50), s. 14; see title CONSTITUTIONAL LAW, Vol. VII., pp. 122 *et seq.*

(*f*) *R.* v. *Powell* (1841), 1 Q. B. 352. In such a case, apparently, the application should be by petition of right (*ibid.*, at p. 363).

(*g*) 3 & 4 Will. 4, c. 27; 37 & 38 Vict. c. 57.

(*h*) *Walters* v. *Webb* (1870), 5 Ch. App. 531.

(*i*) Watkins on Copyholds, Vol. I., p. 290; Coke, The Compleat Copy-holder (1673), s. 41.

(*k*) Watkins on Copyholds, Vol. I., p. 293; *Payne* v. *Baker* (1662), O. Bridg. 18. The lord's remedy is by seizure; see p. 57, *ante*.

(*l*) *Clarke* v. *Twyford* (1859), 7 W. R. 538; and as to cost of surrender, see p. 95, *ante*. A voluntary covenant to surrender copyholds is not generally enforceable (*Dening* v. *Ware* (1856), 22 Beav. 184), unless accompanied by a valid declaration of trust (*Steele* v. *Walker* (1860), 28 Beav. 466).

trust (*m*), but it is often a question of the intention of the testator (*n*).

Where the proceeds of sale of lands taken by a railway company are invested in the purchase of copyholds, the company must pay the fees on admittance as part of the costs of such admittance (*o*), but not the fine thereon (*p*).

Where between contract and completion of a sale of copyholds a trustee for sale dies, the cost of admittance of a new trustee is payable by the trust estate, not by the purchaser (*q*).

SUB-SECT. 3.—*By Deed.*

Joint tenants.

278. Joint tenants and coparceners, being but one tenant, may after admittance release to each other without further admittance (*r*). But a release by two of three joint tenants in favour of the third prior to admittance will be inoperative (*s*) unless it is capable of being construed as a disclaimer, in which case the lord will be entitled to one fine only upon the admittance of the releasee (*t*); such release, however, will not be good as a disclaimer if executed after the exercise by all three joint tenants of acts of ownership over the estate (*u*).

Contingent executory and future interests and a possibility coupled with an interest in copyhold tenements may be disposed of by deed (*a*).

Conditions.

If a surrender has been made upon condition, the condition may be released by deed without affecting the tenancy as against the lord, and no further surrender is required (*b*).

A person who has been wrongfully admitted may become tenant by right by taking a release by deed of the right to admittance from the person entitled to it (*c*).

Release of equitable interests.

279. Where there is a tenant on the court rolls, the lord has nothing to do with the equitable title. In such a case the persons equitably entitled can deal with their equitable interests as they please, without thereby giving to the lord any right to a fine (*d*).

(*m*) *Cole* v. *Jealous* (1845), 5 Hare, 51 (devise).
(*n*) *Playters* v. *Abbott* (1833), 2 My. & K. 97.
(*o*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80.
(*p*) *Re Eastern Counties Railway, Ex parte Sawston* (*Vicar*) (1858), 6 W. R. 492.
(*q*) *Paramore* v. *Greenslade* (1853), 1 Sm. & G. 541.
(*r*) Watkins on Copyholds, Vol. I., pp. 82, 340; Co. Litt. 59 a, note (2); *Mortimore's Case* (1629), Het. 150; but see *Kite and Queinton's Case* (1589), 4 Co. Rep. 25 a; and p. 104, *ante*.
(*s*) *R.* v. *Wanstead* (*Lord of the Manor*) (1853), 23 L. J. (Q. B.) 67.
(*t*) *Wellesley* (*Viscount*) v. *Withers* (1855), 4 E. & B. 750.
(*u*) *Bence* v. *Gilpin* (1868), L. R. 3 Exch. 76.
(*a*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6; and see p. 77, *ante*.
(*b*) Watkins on Copyholds, Vol. I., p. 82; *Hull* v. *Shar-Brook* (1604), Cro. Jac. 36.
(*c*) Watkins on Copyholds, Vol. I., p. 83; *Kite and Queinton's Case, supra*; *Stone* v. *Exton* (1679), 2 Show. 82.
(*d*) *Hall* v. *Bromley* (1887), 35 Ch. D. 642, C. A.

SECT. 4. Transmission of the Tenant's Estate.

Fines and Recoveries Act, 1833.

280. Under the Fines and Recoveries Act, 1833 (*e*), a married woman, with her husband's concurrence, is enabled to dispose of lands of any tenure. It is, however, provided that the Act shall not extend to lands held by copy of court roll in any case in which any of the objects to be effected by the section could, before the passing of the Act, have been effected by surrender into the hands of the lord (*f*). But a declaration of trust of copyholds by a married woman tenant on the court rolls with the concurrence of her husband, and by deed acknowledged in accordance with the requirements of the Act, is a disposition within the meaning of the Act, and does not come within the proviso, and consequently the customary heir of such married woman will be a trustee of the legal estate subject to the trusts so declared (*g*).

Severance.

281. If a lord grants a copyhold tenement to a person so that it becomes severed from the manor, the interest of the copyholder will not be thereby prejudiced unless he was a party to the severance; and accordingly, if by reason of the tenement ceasing to be parcel of the manor the customary mode of alienation ceases to be possible, the copyholder may alienate by the ordinary common law conveyance, because otherwise his power of alienation would be gone (*h*).

Settled Land Acts.

282. On a sale, exchange, partition, lease, mortgage, or charge by a tenant for life of settled copyholds or customary lands vested in trustees, the tenant for life may under the Settled Land Act, 1882, convey or create the same by deed for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge; and such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under the Act, will be effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject as in the Act mentioned (*i*). And in the case of such a deed relating to copyhold or customary land it will be sufficient that the deed be entered on the court rolls of the manor, and the steward on production to him of the deed must make the proper entry, and on that production and on payment of customary fines, fees, and other dues or payments any person whose title under the deed requires to be perfected by admittance must be admitted accordingly (*k*).

(*e*) 3 & 4 Will. 4, c. 74, s. 77.

(*f*) *Ibid.*

(*g*) *Carter* v. *Carter*, [1896] 1 Ch. 62.

(*h*) *Phillips* v. *Ball* (1859), 6 C. B. (N. S.) 811. As to severance of copyholds from the manor, see p. 21, *ante*.

(*i*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 20. As to the fine payable on such a sale, see p. 34, *ante*.

(*k*) The steward may require the production of so much of the settlement as may be necessary to show the title of the person executing the deed, and he may enter it on the court rolls if he thinks fit (*ibid.*, s. 20 (2) (iii.), (3)).

SUB-SECT. 4.—*By Will.*

SECT. 4. Transmission of the Tenant's Estate.

283. Every person of full age (*l*) may by will devise or dispose of his customary freeholds, tenant right, customary or copyhold estates (*m*). Customary freeholds, as well as copyholds, may pass under the designation "freehold" in a devise (*n*).

Effect of Wills Act, 1837.

The effect of the Wills Act, 1837, is not to abolish the need for the admittance of the devisee of copyholds, but merely to dispense with the necessity for a surrender to the use of the will, and to leave the rights of both the customary heir and the devisee otherwise unaffected (*o*). It merely enables a copyholder to devise the right to call for the legal estate in the copyhold tenement, which legal estate can only be obtained by admittance as tenant on the court rolls according to the custom. It does not alter special customs of a manor as to the way in which the copyhold tenements might or ought to be held (*p*). Hence, although the devisee of an unadmitted surrenderee is entitled to be admitted tenant, it is only on payment of all fines, fees, and stamps, all of which must apparently be paid as a condition precedent to admittance (*q*).

Nature of will of copyholds.

284. The will of a copyhold tenant is nothing more than a direction to the lord as to the person who is to be admitted into the tenancy; and a direction in the will that the lord shall admit a particular person or his nominee is an alternative, and not a double exercise of the right, and therefore the nominee has a right to admittance without the intervening admittance and surrender by the donee of the power to nominate (*r*).

SECT. 5.—*Destruction of the Tenant's Estate by Surrender, Merger and Escheat.*

Distinction between extinguishment and enfranchisement.

285. Copyhold tenure may be destroyed in two ways, namely, by extinguishment and by enfranchisement (*s*). The difference between these two methods lies in this, that although extinguishment destroys the tenure, yet the demisable quality, that is to say, the customary power of the lord to regrant by copy of court roll according to the custom, is not destroyed (*a*). On the other hand, enfranchisement, including the acquisition by a tenant of the seignory of his own tenement as distinguished from the seignory

(*l*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 7.
(*m*) *Ibid.*, s. 3; see p. 36, *ante*.
(*n*) *Re Steel, Wappett* v. *Robinson*, [1903] 1 Ch. 135; and as to copyholds, see *Re Bright-Smith, Bright-Smith* v. *Bright-Smith* (1886), 31 Ch. D. 314, where, however, there was no residuary devise. See also *Cuthbert* v. *Lempriere* (1814), 3 M. & S. 158; *Reeves* v. *Barker* (1854), 18 Beav. 372.
(*o*) *Garland* v. *Mead* (1871), L. R. 6 Q. B. 441. As to the effect of a devise upon the testator's widow's right to freebench, see p. 79, *ante*.
(*p*) *Howard* v. *Gwynn* (1901), 84 L. T. 505.
(*q*) *R.* v. *Wilberton* (*Lady of the Manor*) (1857), 29 L. T. (o. s.) 126.
(*r*) *Glass* v. *Richardson* (1852), 9 Hare, 698, *per* TURNER, V.-C., at pp. 701, 702; affirmed (1852), 2 De G. M. & G. 658, C. A. The common form devise of copyholds to such uses in favour of a purchaser as the testator's executors or trustees shall appoint is based on this principle.
(*s*) Watkins on Copyholds, Vol. I., pp. 423, 431, 435.
(*a*) *Ibid.*

SECT. 5. **Destruction of the Tenant's Estate by Surrender, Merger and Escheat.**

of the entire manor, destroys for ever, not only the tenure, but also the demisable quality or power to regrant by copy (*b*).

Again, extinguishment of copyhold tenure enures for the benefit of all persons interested in the manor, such as the lord, his mortgagees, and other incumbrancers, and persons interested under settlements (*c*). Enfranchisement enures for the benefit of all persons similarly interested in the tenant's estate (*d*).

Rights of common.

Where copyhold tenure has been extinguished, rights of common annexed to the copyhold estate will be destroyed, but may be regranted upon a regrant of the land by copy of court roll. Meanwhile the lord will not have such rights of common himself, for they were annexed to the copyhold estate (*e*).

Determination of tenancy by surrender.

286. Where a tenant surrenders the entire seisin in his copyholds to the lord, not for the purpose of conveyance to a new tenant, but expressly to determine his own tenancy, the copyhold tenure of the land will be thereby extinguished (*f*). So if a copyholder releases to the lord, or surrenders to his use or without declaring any use, or if he does any act indicating a determination to relinquish his tenancy, it is sufficient to extinguish the copyhold tenure (*g*).

A surrender by a copyholder for life or lives passes to the lord all the interest which the tenant possesses, and cannot pass less. It operates by way of renunciation of the copyhold tenement, so that, even if the surrender be made as a means of conveyance to a new tenant, the latter takes by direct regrant from the lord, and not by the surrender (*h*).

Merger.

287. When the freehold and copyhold interests in the same premises unite in the same person, the copyhold interest becomes extinguished if they are held in the same right, but suspended only if held in different rights, although the interests need not be commensurate (*i*).

Purchase of tenement by the lord.

Where the lord entitled in fee to the manor takes a surrender on a purchase by himself of a copyhold parcel of the manor to him and his heirs, such parcel will merge in and devolve with the manor (*k*), and carry with it any allotment made to him in respect thereof, even though the commissioners under the Inclosure Act under which the allotment was made erroneously supposed that no merger had taken place (*l*). Where one of several

(*b*) *Phillips* v. *Ball* (1859), 6 C. B. (N. S.) 811.

(*c*) *Hicks* v. *Sallitt* (1853), 3 De G. M. & G. 782, C. A.; *Doe* d. *Gibbons* v. *Pott* (1781), 2 Doug. (K. B.) 709.

(*d*) Watkins on Copyholds, Vol. I., p. 438; *Wynne* v. *Cookes* (1780), 1 Bro. C. C. 515; *Wilson* v. *Allen* (1820) 1 Jac. & W. 611; *Challoner* v. *Murhall* (1795), 2 Ves. 524.

(*e*) Watkins on Copyholds, Vol. I., p. 451; see pp. 50, 58, *ante*; and generally see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 523 *et seq.*

(*f*) Watkins on Copyholds, Vol. I., p. 117.

(*g*) *Ibid.*, p. 430.

(*h*) *Ibid.*, p. 71; and see p. 92, *ante*.

(*i*) *Ibid.*, p. 423.

(*k*) *Doe* d. *Gibbons* v. *Pott* (1781), 2 Doug. (K. B.) 709.

(*l*) *King* v. *Moody* (1826), 2 Sim. & St. 579; and as to purchase of copyhold allotments by trustees of a manor, see *Hicks* v. *Sallitt* (1853), 3 De G. M. & G. 782, C. A.

SECT. 5. Destruction of the Tenant's Estate by Surrender, Merger and Escheat.

lords tenants in common takes admittance to copyholds it seems that so far as his interest in the manor is concerned the copyholds will merge in the freehold interest (*m*), and it has been held that a lord who is merely tenant for life of a manor and takes admittance to copyholds thereby merges the copyhold interest for the benefit of the remainderman (*n*). In such case, to avoid any question of merger on a purchaser of copyholds by a lord, a conveyance should be taken to a trustee for the purchaser.

But if a copyholder in fee surrender to his lord for the life of the lord with remainders over, the copyhold tenure will be suspended only during the life of the lord and revive on the remainders falling into possession on his death (*o*).

Acquisition of seignory by the tenant.

288. On the other hand, if a copyholder acquire by purchase or descent the whole manor of which he is tenant, the copyhold tenure of his former tenement will be extinguished (*p*).

Again, if copyholds are granted to a tenant for life, with remainders to others for their lives, and the tenant take a lease of the lands by deed, his copyhold estate will be extinguished, but not that of the remainderman (*o*). So where a copyholder in tail accepts a grant from the lord of the freehold and fee simple the copyhold tenure is destroyed by merger in the freehold (*q*), unless the estate tail be equitable (*r*).

The rules as to merger applicable to ordinary freeholds are equally applicable to copyholds (*s*).

Escheat and forfeiture.

289. The tenant's estate will become absolutely destroyed by escheat or absolute forfeiture thereof to the lord (*t*).

Part V.—Enfranchisement.

SECT. 1.—*At Common Law.*

Enfranchisement at common law.

290. Enfranchisement at common law can only be effected by the lord of the manor, and not even by him unless he has either

(*m*) *Cattley* v. *Arnold* (1858), 4 K. & J. 595.

(*n*) See *St. Paul* v. *Dudley and Ward* (*Viscount*) (1808), 15 Ves. 167; and see *King* v. *Moody, ubi supra;* but no merger under similar circumstances takes place in the case of a lord's purchase of customary freeholds (*Bingham* v. *Woodgate* (1829), 4 Russ. & M. 32); and consider the rule as to merger of estates now established in respect of leasehold interests, namely, that merger is a question of intention (*Capital and Counties Bank* v. *Rhodes*, [1903] 1 Ch. 631; *Ingle* v. *Vaughan Jenkins*, [1900] 2 Ch. 368). It has been suggested that in such a case the lord would at least be entitled to a charge on the freehold reversion for the sums spent in purchasing the copyhold interest (Davidson, Precedents and Forms in Conveyancing, 4th ed., Vol. II., Part I., p. 383, n.).

(*o*) Watkins on Copyholds, Vol. I., p. 428; *Curtise* v. *Cottel* (1586), 2 Leon. 72.

(*p*) Watkins on Copyholds, Vol. I., p. 431.

(*q*) *Dunn* v. *Green* (1724), 3 P. Wms. 8; *Parker* v. *Turner* (1687), 1 Vern. 458; and as to merger of an estate tail in lands in ancient demesne by enfranchisement by the lord, see *Cresswell* v. *Hawkins* (1857), 3 Jur. (N. S.) 407.

(*r*) *Merest* v. *James* (1821), 6 Madd. 118; and see p. 73, *ante*.

(*s*) Watkins on Copyholds, Vol. I., p. 432; *Dove* v. *Williot* (1589), Cro. Eliz. 160.

(*t*) Watkins on Copyholds, Vol. I., p. 430; *Bunter* v. *Coke* (1707), 1 Salk. 237. As to forfeiture, see further, p. 46, *ante*, and, as to escheat, p. 54, *ante*.

SECT. 1. At Common Law.

the fee simple of the manor, or a power of sale or exchange, or an express power to enfranchise (*a*). Where, however, the lord of a manor is seised in right of his prebend only, he cannot enfranchise except by express statutory authority (*b*); and ecclesiastical and other corporations are, in certain circumstances, restricted from entering into agreements to enfranchise (*c*).

Where there is an agreement to enfranchise at common law, and the consideration is for a gross sum not exceeding £500, the lord may make a statutory declaration as to his estate and interest in the manor (*d*); and if the declaration shows that the lord may enfranchise and receive the consideration for his own use, the enfranchisement is valid, and the lord's receipt for the consideration money effectually discharges the person paying it from being bound to see to the application of it or being answerable for any loss or misapplication of it (*e*). But if the lord is not in fact entitled to receive the money for his own use, he is deemed to have received it as trustee for the persons entitled to it (*f*).

Release of seignorial rights.

291. If the lord release his seignorial rights or his reversion by way of enlargement to a copyholder, the land will be enfranchised (*g*); but rights of common annexed to the copyhold will not necessarily be thereby extinguished (*h*). Similarly, if the lord convey the freehold of a tenement to a third person to the use of the copyholder of that tenement, the effect of the Statute of Uses will be to convey the legal estate in the freehold to the copyholder and so destroy the copyhold tenure (*i*).

So if a copyholder release his estate to a grantee of the freehold of the same tenement the copyhold tenure will be absolutely destroyed (*j*), and where a lord grants in fee simple to the owner of a tenement held by tenant right the tenure is extinguished (*k*).

Under a common law enfranchisement the title acquired by the enfranchised copyholder is subject to any defect or incumbrance affecting the lord's title (*l*).

Enfranchisement without admittance.

292. An heir to copyholds may receive enfranchisement from the lord without being previously admitted, for his title is complete without admittance, and it makes no difference that he is also entitled to take as devisee (*m*).

(*a*) Watkins on Copyholds, Vol. I., p. 436. For forms of enfranchisement at common law, see Encyclopædia of Forms, Vol. V., pp. 228 *et seq.*

(*b*) *Doe* d. *North* v. *Webber* (1837), 5 Scott, 189.

(*c*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 72; see p. 131, *post.*

(*d*) *Ibid.*, s. 89 (1).

(*e*) *Ibid.*, s. 89 (2).

(*f*) *Ibid.*, s. 89 (3).

(*g*) Watkins on Copyholds, Vol. I., p. 448; see *Doe* d. *Reay* v. *Huntington* (1803), 4 East, 271.

(*h*) *Baring* v. *Abingdon*, [1892] 2 Ch. 374, C. A; see *Styant* v. *Staker* (1691), 2 Vern. 250. And see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 528.

(*i*) Watkins on Copyholds, Vol. I., p. 424.

(*j*) *Ibid.*, p. 430; *Anon.* (1583), Cro. Eliz. 21; *Wilson* v. *Allen* (1820), 1 Jac. & W. 611.

(*k*) *Doe* d. *Newby* v. *Jackson* (1823), 2 Dow. & Ry. (K. B.) 514.

(*l*) Brown's Copyhold Enfranchisement Acts, 3rd ed. (1903), p. 16.

(*m*) *Wilson* v. *Allen* (1820), 1 Jac. & W. 611; see also *Minton* v. *Kirwood* (1868), 3 Ch. App. 614.

293. Where the bare legal estate in copyholds is outstanding in a trustee, and the beneficial owner in equity has been erroneously admitted, the latter may accept enfranchisement from the lord, and in such a case the trustee must complete in form what has been done in substance (*n*).

Effect of enfranchisement

294. If a tenant in ancient demesne (*o*), or a copyholder tenant in tail, accepts from the lord a grant of the fee simple, the copyhold estate tail will be barred or, more strictly speaking, merged in the fee simple so obtained (*p*). If a person having a particular estate in copyhold accepts enfranchisement from the lord, it will enure for the benefit of all in remainder, and they will take similar estates in the enfranchised lands to those they took in the copyholds (*q*).

In the case of lands of ancient demesne, the effect of enfranchisement is to alter the tenure of the lands, but not the estates of the parties taking enfranchisement (*r*).

As to copyholds, the effect of enfranchisement is to deprive the lord of all his rights in the property and of all power to admit; and his rights become vested in the person to whom enfranchisement has been granted (*s*). Ancient rents and other services and rights of escheat cannot be reserved upon enfranchisement (*t*).

Enfranchisement will destroy all rights and privileges annexed to the copyhold estate as distinguished from the land, such as rights of common in gross over land within the manor and estovers, and such rights and privileges will not be preserved or regranted by the word "appurtenances" in the deed of enfranchisement. But rights attaching to the land, as distinguished from the estate in the land, will not be destroyed by enfranchisement, as, for instance, rights of way or of common appendant over manorial lands or of common over lands without the manor (*u*).

Enfranchisement of lunatic's copyhold.

295. Copyholds belonging absolutely to a lunatic can only be enfranchised with the leave of the court; and as the court cannot alter the rights of succession to the lunatic's property, it will direct that, in the event of the lunatic dying intestate, the enfranchised copyholds shall devolve to the heir-at-law of the lunatic in trust for such persons as would have taken them if they had not been enfranchised (*a*).

(*n*) See cases in note (*m*), p. 112, *ante*.

(*o*) *Cresswell* v. *Hawkins* (1857), 3 Jur. (N. S.) 407. As to ancient demesne see p. 67, *ante*.

(*p*) *Re Hart, Ex parte London School Board* (1889), 41 Ch. D. 547; and see p. 73, *ante*.

(*q*) *Wynne* v. *Cookes* (1780), 1 Bro. C. C. 515. Compare the effect of statutory enfranchisement; see note (*t*), p. 115, *post*.

(*r*) Watkins on Copyholds, Vol. I., p. 444.

(*s*) *Minton* v. *Kirwood* (1866), L. R. 1 Eq. 449.

(*t*) In consequence of the Statute of "Quia Emptores," 1290 (18 Edw. 1, c. 1); Watkins on Copyholds, Vol. I., p. 450; *Bradshaw* v. *Lawson* (1791), 4 Term Rep. 443.

(*u*) Watkins on Copyholds, Vol. I., p. 452; *Jorden* v. *Atwood* (1605), Owen, 121 (common appendant); *Crowder* v. *Oldfield* (1706), 1 Salk. 170 (common without the manor); *Rich* v. *Barker* (1658), Hard. 131; *Emson* v. *Williamson* (1598), 1 Roll. Abr. 933 (right of way). See further p. 127, *post*, and title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 528, 529.

(*a*) *Re Ryder* (*H. D.*) (1882), 20 Ch. D. 514, C. A. As to lunatics generally, see title LUNATICS AND PERSONS OF UNSOUND MIND.

SECT. 1. At Common Law.

Enfranchisement presumed.

296. Where lands which were originally held by copy of court roll have not for a considerable length of time been treated as copyhold upon the court roll of the manor, a presumption is raised against the lord that the lands have been enfranchised (*b*). But enfranchisement of copyholds will not be presumed from mere negligence of the lord, in exacting, for instance, a small periodical payment in lieu of fines and heriots (*c*).

Presumption of enfranchisement will be made even against the Crown (*d*).

Deed of enfranchisement not a conveyance.

297. A deed of enfranchisement of copyhold is not a conveyance of copyholds, and therefore does not fall within the exemption of conveyances of copyholds from registration under the Middlesex Registry Act, 1708 (*e*).

SECT. 2.—*Under the Copyhold Act*, 1894.

SUB-SECT. 1.—*The Right to enfranchise.*

Compulsory enfranchisement.

298. Where there is an admitted tenant of copyhold land other than a mortgagee not in possession, the lord or the tenant may, under the Copyhold Act, 1894 (*f*), require and compel enfranchisement of the land under the Act (*g*). Any lands liable to heriot, quit-rent, free rent, or other manorial incident may be freed and enfranchised therefrom at the instance of the lord or the tenant under the Act (*h*). But the provisions of the Act with respect to compulsory enfranchisement do not apply to any copyhold land held for a life or lives or for years where the tenant has not a right of renewal, or to manors in which the Crown has any estate or interest in possession, reversion, or remainder (*i*); nor does the Act affect any right acquired in pursuance of registration under the Land Registry Act, 1862, or the Land Transfer Acts, 1875 and 1897, except to such extent as may be recorded by registration in pursuance of those Acts (*k*).

Upon the admittance or enrolment of any tenant of a manor the steward must give him notice of his right to enfranchise (*l*).

(*b*) *Re Lidiard and Jackson's and Broadley's Contract* (1889), 42 Ch. D. 254.

(*c*) *Turner* v. *West Bromwich Union Guardians* (1860), 3 L. T. 662.

(*d*) *Roe* d. *Johnson* v. *Ireland* (1809), 11 East, 280, where the copyhold rent had been 6*s.* 6*d.*, but in a parliamentary survey in 1649 the premises were described as freehold, and the rent therefor sixpence, and, there being no evidence that any other rent had ever thereafter been paid, it was held that there was evidence to go to the jury that the premises were freehold.

(*e*) 7 Ann. c. 20, s. 17; *R.* v. *Middlesex* (*Registrar of Deeds*) (1880), 21 Q. B. D. 555, C. A.

(*f*) 57 & 58 Vict. c. 46, repealing and consolidating the provisions of the Copyhold Acts of 1841, 1843, 1844, 1852, 1858, and 1887, and also s. 4 of the Universities and Colleges Estates Act Extension Act, 1860 (23 & 24 Vict. c. 59); but the repeal does not affect the validity of awards, deeds, orders, certificates, scales, instruments, charges, and rentcharges created or having effect under any repealed Act (s. 100).

(*g*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 1. For the form of notice, see Encyclopædia of Forms, Vol. V., p. 250.

(*h*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 2. For the form of notice applicable in such a case, see Encyclopædia of Forms, Vol. V., p. 251.

(*i*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 96.

(*k*) *Ibid.*, s. 97.

(*l*) The notice must be given free of charge and must be according to the form prescribed. Neglect of this duty will disentitle the steward to any fee for that

SECT. 2. Under the Copyhold Act, 1894.

Purchase of tenant's interest in lieu of enfranchisement.

299. Where notice requiring enfranchisement under the Act has been given by the tenant, the lord may, in certain cases where the lord is of opinion that enfranchisement would cause him extraordinary damage, offer to purchase the tenant's interest in lieu of enfranchisement (*m*). If the offer is not accepted, enfranchisement shall not take place, unless the Board of Agriculture and Fisheries (*n*) think proper to impose such terms and conditions as, in the opinion of the Board, shall be sufficient to protect the lord's interests (*o*). If, however, the offer is accepted by the tenant, the contract must be carried out under the provisions of the Acts (*p*) so as to vest the land in the lord (*q*).

If the Board consider that it is impossible to decide the prospective value of the land to be enfranchised, or that compulsory enfranchisement would result in any special hardship or injustice, the Board may suspend proceedings for compulsory enfranchisement, but in such case the Board must state their reasons for so doing in their annual report directed by the Act to be laid before Parliament (*r*).

Where on compulsory enfranchisement it appears that the tenant was admitted upon conditions affecting the user of the land imposed for the benefit of the public or the other tenants of the manor, and the Board are of opinion that some special hardship or injustice would result if the land were released from the condition, the Board may continue and give effect to the condition by the award of enfranchisement (*s*).

Voluntary enfranchisement.

300. Voluntary enfranchisement may be effected by the lord of any manor and the tenant under the Act with the consent of the Board, and subject to the provisions of the Act (*t*). But an agreement for an enfranchisement will not be valid—(1) where the manor or land to be affected by the enfranchisement is held under an ecclesiastical or other corporation, or (2) where any such corporation or the patron of a living is interested in the manor or land to the extent of one-third of the value thereof, or (3) where, in the opinion of the Board, any such corporation would be affected by the enfranchisement, unless, in each case, the agreement is made

admittance and enrolment (Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 97). For the prescribed form, see *ibid.*, Sched. I.; and Encyclopædia of Forms, Vol. V., p. 226.

(*m*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 11 (1). For form of offer, see Encyclopædia of Forms, Vol. V., p. 270.

(*n*) See note (*n*), p. 128, *post*.

(*o*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 97 (3).

(*p*) *Ibid.*, s. 97 (2), (4), (5), (6), (7), (8), (9).

(*q*) As to the effect of thus uniting the copyhold interest in the lord of the manor, see p. 110, *ante*. For form of conveyance by the copyhold tenant of his interest to the lord, see Encyclopædia of Forms, Vol. V., p. 271.

(*r*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 12. As to a case of hardship, see *Reynolds* v. *Woodham Walter* (*Lord of the Manor*) (1872), L. R. 7 C. P. 639.

(*s*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 13. As to increase of value to tenant by the removal of restrictions, see *Lingwood* v. *Gyde* (1866), L. R. 2 C. P. 72.

(*t*) Copyhold Act, 1894 (57 & 58 Vict. 46), s. 14 (1), (2). Voluntary enfranchisement under the Act may be effected by trustees and limited owners (*ibid.*, ss. 43, 44). For form of agreement for voluntary enfranchisement under the Act, see Encyclopædia of Forms, Vol. V., p. 281.

SECT. 2. Under the Copyhold Act, 1894.

with the consent in writing of that corporation or person. Such consent must in the case of a corporation aggregate be under the seal of the corporation, and in every other case must be signed by the person giving it, and in all cases must be annexed to the agreement to which it relates (*a*).

Voluntary enfranchisement under the Act is effected by such a deed as would be proper on an enfranchisement by a lord seised of the manor for an absolute estate in fee simple in possession (*b*).

Concurrence of persons entitled to notice.

The assent or dissent or acquiescence of any person entitled to notice (*c*) of a proposed voluntary enfranchisement should be stated to the Board when the deed of enfranchisement is sent to the Board for confirmation. If any dissent in writing has been expressed, the Board will withhold their consent to the deed until they have made further inquiries and are satisfied that the agreement is not fairly open to objection, and if they think proper, the Board may make further inquiries (*d*).

Persons entitled to enfranchise.

301. Anything by the Act required or authorised to be done by a lord or by a tenant may be done by him notwithstanding that his estate in the manor or land is a limited estate only (*e*), or that he is a trustee, and in the latter case where there is more than one trustee, and one or more of them is abroad, or is incapable, or refuses to act, any proceedings necessary to be done by the trustees for effecting an enfranchisement under the Act may be done by the other trustee or trustees (*f*).

Persons under disability.

When the lord or tenant or any person interested in an enfranchisement, redemption, or sale or otherwise is an infant, a lunatic, or is abroad, or unknown, or unascertained, any act required to be done by or under the Act shall be done by his or her guardian, committee, or attorney, if any such there be, and in all other cases by some fit person appointed by the Board to represent him or her for the purposes of the Act (*g*). Where a female infant is tenant for life in possession of a manor subject to a term of years in trustees to secure annuities and to receive the rents and profits during minority, she is the lady of the manor for the time being, and although the trustees have the usual power of sale, yet on a tenant giving notice to enfranchise, the guardian, and not the trustees, is the proper person to appoint the valuers for the purposes of the Act (*h*).

Married women.

For the purposes of the Act a married woman, whether lady of the manor or tenant, is deemed to be a *feme sole* (*i*).

(*a*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 72. This section does not relate to compulsory enfranchisement.

(*b*) *Ibid.*, s. 16 (1). For forms of deed applicable, see Encyclopædia of Forms, Vol. V., pp. 284 *et seq.*

(*c*) See p. 118, *post.*

(*d*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 16 (2), (3).

(*e*) *Ibid.*, s. 43.

(*f*) *Ibid.*, s. 44.

(*g*) *Ibid.*, s. 45.

(*h*) *Griggs* (*Maynard*) v. *Gibson* (1866), 14 W. R. 819 (a case under the Copyhold Act of 1841, s. 11). As to infants generally, see title INFANTS AND CHILDREN.

(*i*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 46. As to married women generally, see title HUSBAND AND WIFE.

SECT. 2. Under the Copyhold Act, 1894.

302. Generally speaking, the steward is to represent the lord for the purposes of the Act, except where the Act provides that the steward shall not represent the lord without express authority, or the lord has given express notice to the tenant and the Board that he intends to act on his own behalf or by a special agent (*k*).

Representation of lord by steward etc.

The lord or tenant or other person interested in proceedings under the Act may act by attorney, but the power of attorney must be in writing signed or sealed by the person or corporation aggregate giving it, and either the original or a copy must be sent to the Board; the power may be revoked by sending a notice to the Board of such revocation (*l*).

Death of lord or tenant.

303. Proceedings for, or in relation to, an enfranchisement under the Act do not abate by the death of the lord or tenant pending the proceedings; and where an admittance or enrolment is necessary in consequence of a death under such circumstances, the admittance or enrolment must be made, but no fine, relief, or heriot is payable to the lord in consequence of a death or any admittance or enrolment on a death occurring between the date of a notice to enfranchise or a completed agreement for enfranchisement under the Act and the enfranchisement in pursuance of that notice or agreement; and the compensation is ascertained on the same footing as if the enfranchisement had been effected immediately after the commencement of the proceedings (*m*).

All rights conferred and all liabilities imposed by the Act on a lord or on a tenant are held to be conferred and imposed respectively on the successors in title of the lord and tenant, unless a contrary intention appears (*n*).

SUB-SECT. 2.—*Preliminary Requirements.*

Payment of fines, heriots etc.

304. A tenant cannot require enfranchisement of any land under the Act until payment or tender, (1) in case the land is copyhold and an admittance thereto has not been made since the 30th June, 1853, of such fine, and of the value of such heriot, if any, as would become payable in the event of admittance on alienation subsequent to that day, and of two-thirds of such a sum as the steward would have been entitled to in respect of the admittance; and (2) in case the land is freehold (including customary freehold) and subject to heriots, and no heriot has become due or payable since the 30th June, 1853, of the value of such heriot, if any, as would become payable in the event of an admittance or enrolment on alienation subsequent to that day, and of two-thirds of such sum as the steward would have been entitled to

(*k*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 47. Thus, the steward cannot without the special authority of the lord consent that the rights of the lord in the mines and minerals or his rights to privileges such as markets, fairs, fisheries, sporting rights etc. shall be affected by an enfranchisement under the Act (*ibid.*, s. 23 (2)).

(*l*) *Ibid.*, s. 48, which also contains provisions as to the powers of the attorney.

(*m*) *Ibid.*, s. 49.

(*n*) *Ibid.*, s. 50. As to the obligation of the tenant to maintain boundaries and otherwise to preserve the identity of lands subject to rent-charge under the Act, see *Searle* v. *Cooke* (1890), 43 Ch. D. 519, C. A.

SECT. 2. Under the Copyhold Act, 1894.

for fees in respect of the alienation, or admittance, or enrolment; and (3) in every other case of all fines and fees consequent on the last admittance to the land (*o*).

Notice to be given.

305. A lord or tenant who requires enfranchisement under the Act must give notice in writing, the lord to the tenant or the tenant to the lord, as the case may be, of his desire to have the land enfranchised (*p*). In the case of voluntary enfranchisement, if the estate of the lord or of the tenant parties to the enfranchisement is less than an estate in fee simple in possession or corresponding copyhold or customary estate, and the tenant has not paid the whole of the cost of enfranchisement, the lord or the tenant respectively must give notice in writing of the proposed enfranchisement to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be affected by the enfranchisement (*q*).

Where land proposed to be enfranchised compulsorily under the Act is held of a manor belonging either in possession or reversion to an ecclesiastical corporation, the Ecclesiastical Commissioners must be served with notice of the proceedings and have the like power of expressing assent to or dissent from the proceedings as is provided by the Act with respect to a person entitled in reversion or remainder, and the provisions of the Act as to notice and proceedings thereon apply accordingly (*r*).

Evidence of the lord's title.

306. Before any enfranchisement under the Act the Board of Agriculture and Fisheries (*a*) may, if they think fit, require the lord or his steward to make a statutory declaration in such form as the Board may direct stating who are the persons for the time being filling the character or acting in the capacity of lord, the nature and extent of the estate and interest of the lord in the manor, and certain other particulars as to the title to the manor (*b*). If the lord or his steward does not make the declaration so required, or if, in the opinion of the Board, the declaration does not fully and truly disclose all the necessary particulars, or if the lord refuse to give any evidence which the Board think proper and necessary to show a satisfactory *primâ facie* title in the lord, or if the Board think that the incumbrancers should be protected, the Board may, if they think the justice of the case requires it, direct the compensation or consideration, where it is a gross sum, to be paid into court or to trustees in manner provided by the Act (*c*). Where the lord applies to the Board to effect an enfranchisement under the Act, the Board must, if the tenant

(*o*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 3.

(*p*) *Ibid.*, s. 4. For regulations as to notice, see *ibid.*, s. 57; and for form of notice, see Encyclopædia of Forms, Vol. V., p. 251.

(*q*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 14 (3). For the form of notice, see Encyclopædia of Forms, Vol. V., p. 287.

(*r*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 73.

(*a*) See note (*n*), p. 128, *post*

(*b*) *Ibid.*, s. 51 (1). For the form specifying the information required by the Board, see Encyclopædia of Forms, Vol. V., p. 252; and for the form of statutory declaration as to the lord's title, see *ibid.*, p. 268.

(*c*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 51 (2).

of the land so require, satisfy themselves of the title of the lord (*d*).

SECT. 2. Under the Copyhold Act, 1894.

SUB-SECT. 3.—*Compensation for Enfranchisement.*

307. When notice requiring an enfranchisement has been given under the Act, the compensation for such enfranchisement must be ascertained according to the Act—that is to say, the parties themselves may agree in writing as to the amount, or they may refer the question of amount to the Board of Agriculture and Fisheries (*e*), or they may appoint a valuer or valuers to determine the amount; and there are detailed provisions in the Act relative to the proceedings to be adopted for ascertaining the compensation to be paid (*f*).

Compensation on compulsory enfranchisement.

On a compulsory enfranchisement the tenant must pay compensation to the steward (*g*).

Compensation to steward.

Where compulsory enfranchisement is at the instance of the lord, or where the land can, in the opinion of the Board, be sufficiently identified, and the compensation amounts to more than one year's improved value of the land, the compensation is to be by rentcharge on the land enfranchised, unless the parties otherwise agree, or the tenant gives notice of his desire to pay in a gross sum; but in all other cases compensation must be paid in a gross sum before the completion of the enfranchisement (*h*).

Rentcharge or gross sum.

308. In cases of voluntary enfranchisement under the Act the consideration may be either a gross sum payable at once or at any time fixed by agreement, or it may be by way of rentcharge issuing out of the enfranchised land, or it may be a conveyance of land, or a right to mines or minerals, or a right to waste lands of the manor, or partly in one of these ways and partly in another or others (*i*). But where the estate of the lord is less than an estate in fee simple in possession, and land not parcel of the manor, or a right to mines or minerals not in or under the land enfranchised, is conveyed as consideration for voluntary enfranchisement under the Act, the land or right must be convenient, in the opinion of the Board, to be held with the manor, and must be settled to uses or on trusts identical with, or corresponding to, those to or on which the manor is held (*k*).

Compensation on voluntary enfranchisement.

Under a voluntary enfranchisement the land enfranchised is to be charged with every sum payable to the lord in respect of the enfranchisement, with interest thereon from the day fixed by the enfranchisement deed for payment thereof until payment thereof, and meanwhile the lord is to be deemed to be mortgagee in fee with power to distrain; and the charge has priority over all incumbrances affecting the land, except tithe rentcharge and any charge

(*d*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 51 (3). For form of application by tenant to the Board for this purpose, see Encyclopædia of Forms, Vol. V., p. 279.

(*e*) See note (*n*), p. 128, *post*. For the form of agreement in such case, see Encyclopædia of Forms, Vol. V., p. 256.

(*f*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 5; and see p. 123, *post*. For forms of appointment of valuers, see Encyclopædia of Forms, Vol. V., pp. 257 *et seq*.

(*g*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 9; and Sched. II. For form of award of compensation, see Encyclopædia of Forms, Vol. V., p. 276.

(*h*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 8.

(*i*) *Ibid.*, s. 15 (1).

(*k*) *Ibid.*, s. 15 (2), (3).

SECT. 2. Under the Copyhold Act, 1894.

having priority by statute, notwithstanding that those incumbrances are prior in date (*l*).

Provisions as to rentcharge.

309. Where the consideration for voluntary enfranchisement under the Act is a rentcharge, it may be a fixed or varying annual sum, or it may be subject to an increase or diminution agreed upon or to be ascertained by valuers upon a given event provided for in the deed of enfranchisement; and the rentcharge may be granted by deed to the lord and his heirs, or to the uses or upon the trusts and subject to the powers and provisions upon and subject to which the manor is held; and it may be charged on all or a part of the land enfranchised (*m*).

The date at which a rentcharge in consideration of a voluntary enfranchisement under the Act is to commence may be fixed by the memorandum of confirmation of the enfranchisement deed, and if not so fixed it will be the date of the confirmation of the deed by the Board (*n*). Every rentcharge created under the Act will be payable half-yearly on the first day of January and the first day of July in each year, and is a first charge upon the land charged, and has priority over all incumbrances on the land except tithe rentcharge and any charge having priority by statute notwithstanding those incumbrances may be prior in date (*o*).

Every rentcharge will be deemed to be granted to the lord and his heirs to the uses, on the trusts, and subject to the powers and provisions subsisting at the date of the enfranchisement in consideration of which the rentcharge arises in respect of the manor, but is not incapable of being severed therefrom or affected by the extinction thereof (*p*).

Recovery.

The remedies provided by s. 44 of the Conveyancing and Law of Property Act, 1881 (*q*), are available for the recovery of rentcharges created in relation to enfranchisement; but relief is given in the case of payment by an occupying tenant of a rentcharge for which not he, but his landlord, is properly liable (*r*). The fact that the last-mentioned Act gives the owner of a rentcharge certain rights does not prevent him from using any other remedies he may have (*s*).

Apportionment.

A rentcharge may be apportioned according to the provisions of the Act (*t*).

A sub-lessee is protected from liability in consequence of the creation or apportionment of a rentcharge under the Act to pay any greater sum of money than he would have been liable to pay if the charge or apportionment had not been made (*a*).

Where a person entitled to land subject to a rentcharge under

(*l*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 19.
(*m*) *Ibid.*, s. 17.
(*n*) *Ibid.*, s. 20.
(*o*) *Ibid.*, s. 27 (a)—(c).
(*p*) *Ibid.*, s. 27 (d).
(*q*) 44 & 45 Vict. c. 41. See title RENTCHARGES AND ANNUITIES.
(*r*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 27 (e); and see also *ibid.*, s. 29.
(*s*) See *Thomas* v. *Sylvester* (1873), L. R. 8 Q. B. 368 (action for debt); *Searle* v. *Cooke* (1890), 43 Ch. D. 519, C. A. (power to distrain).
(*t*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 28. For form of deed of apportionment, see Encyclopædia of Forms, Vol V., p. 301.
(*a*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 29.

the Act is not absolutely entitled to such land, no apportionment of the rentcharge can be made without the consent of the Board (*b*).

Provisions are contained in the Act in accordance with which a rentcharge created under the Act may be redeemed (*c*) or sold (*d*); and there are regulations as to the payment of money into court or to trustees under the Act (*e*), and the investment of such money (*f*). Where it is desired to redeem a rentcharge under the Act, and the person entitled to it is entitled for a limited estate or interest only, the Board must, if the redemption money exceed £20 for all the rentcharges under the Act in the manor, direct it to be paid into court or to trustees in manner provided by the Act, and in every other case to be either so paid or paid to that person for his own use (*g*).

Redemption.

310. Consideration money to be paid under the Act for the use of a spiritual person in respect of his benefice or cure may, at the lord's option, be paid to Queen Anne's Bounty and applied by the Bounty for the augmentation of the benefice or cure (*h*). But where, on an enfranchisement under the Act, it appears to the Board that the enfranchisement might have been effected under the Episcopal and Capitular Estates Act (the Ecclesiastical Estates Act), 1851 (*i*), or any amending Act, the consideration for enfranchisement must be paid and applied as if the enfranchisement had been effected under those Acts and subject to the powers thereby given to the Church Estates Commissioners and the Ecclesiastical Commissioners respectively (*k*).

Ecclesiastical manors.

311. With the consent and under the direction of the Board, persons entitled to receive a rentcharge, but having a limited estate or interest only, or being a corporation not otherwise authorised to do so, may sell such rentcharge (*l*).

Sale of rentcharge.

312. Where money is payable under the Act as compensation or consideration for an enfranchisement to a lord having only a limited estate or interest in the manor, the Board, if such money exceed £20 for all the enfranchisements in the manor, must direct it to be paid into court or to trustees in manner provided by the Act. If, however, it does not exceed £20, the Board may direct it to be paid either into court or to trustees as aforesaid or to the lord

To whom compensation to be paid.

(*b*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 28. For form of application to the Board for consent to apportionment, see Encyclopædia of Forms, Vol. V., p. 298.

(*c*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 30. For notice of intention to redeem, see Encyclopædia of Forms, Vol. V., p. 297.

(*d*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 31. For form of application to the Board for consent to sale, see Encyclopædia of Forms, Vol. V., p. 299.

(*e*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 32. As to costs of parties to proceedings on payment into court, see *Ex parte Hereford* (*Bishop*), *Ex parte Saye and Sele* (*Lord*) (1852), 5 De G. & Sm. 265.

(*f*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 33. As to the costs of appearance on petition to have money in court invested, see *Ex parte Queens' College, Cambridge* (1857), 27 L. J. (CH.) 178.

(*g*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 30. For form of notice desiring payment into court or to trustees, see Encyclopædia of Forms, Vol. V., p. 280.

(*h*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 74.

(*i*) 14 & 15 Vict. c. 104, amended by 17 & 18 Vict. c. 116; see also 23 & 24 Vict. c. 124 and 31 & 32 Vict. c. 114.

(*k*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 75.

(*l*) *Ibid.*, s. 31.

SECT. 2. Under the Copyhold Act, 1894.

for his own use (*m*). If money is directed by the Act to be paid to trustees, and there are any trustees acting under a settlement under which the lord or owner of the manor or rentcharge in respect of which the money arises derives his estate or interest in the manor or rentcharge, it must be paid to those trustees or to such one or more of them as the Board may direct; and in any other case the money should be paid to trustees to be appointed by the Board under the Act (*n*).

Compensation or consideration money payable to the use of a corporation lord of a manor other than a manor held for charitable purposes within the meaning of the Charitable Trusts Acts, 1853 and 1855, may, at the option of the lord, be paid to trustees appointed by the Board for the purposes of the Act (*o*).

Whether money is paid into court or to trustees, the consent of the Board is required to any application or investment thereof (*p*). The Board has power to finally decide any dispute as to the proper application, appropriation, or investment under the Act of any money payable in respect of enfranchisement (*q*).

The receipt of any person for any money paid to him in pursuance of the Act is a sufficient discharge (*r*).

Compensation charged on enfranchised land.

313. Money payable as compensation or consideration for enfranchisement under the Act may be charged on the enfranchised land (*s*).

Where a tenant has paid compensation for enfranchisement, and his title proves bad, he may have a charge on the land for the amount paid with interest at 4 per cent. per annum (*t*); and if a mortgagee pays such compensation, he may add the amount so paid and his expenses to his security (*a*).

Loans for the purposes of the Act may be obtained from companies authorised to make advances for agricultural improvements, and security for the loans may be by charge under the Act (*b*).

Certificate of charge.

A charge authorised by the Act may be effected by a certificate of charge under the seal of the Board countersigned by the person at whose instance the charge is made, and is transferable by indorsement on the certificate; and the owner for the time being of such a certificate has, for the recovery of any sum payable periodically, the like remedies as an owner of a rentcharge under the Act has (*c*), and for the recovery of any sum whatsoever secured by the certificate the same remedies as a mortgagee of ordinary freeholds in fee simple (*d*).

(*m*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 26 (1).
(*n*) *Ibid.*, s. 32 (2), (3). As to appointment of trustees by the Board, see p. 128, *post*.
(*o*) *Ibid.*, s. 77.
(*p*) *Ibid.*, s. 33.
(*q*) *Ibid.*, s. 26 (5).
(*r*) *Ibid.*, s. 25.
(*s*) *Ibid.*, s. 36; interest must not exceed 5 per cent.
(*t*) *Ibid.*, s. 38.
(*a*) *Ibid.*, s. 39.
(*b*) *Ibid.*, s. 40; see title AGRICULTURE, Vol. I., p. 267.
(*c*) See p. 120, *ante*.
(*d*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 41.

Under the Copyhold Act, 1894.

Appointment of valuers.

314. Where a notice requiring an enfranchisement has been given under the Copyhold Act, 1894, the Board of Agriculture and Fisheries (*e*) must determine the amount of compensation for the enfranchisement if the lord and the tenant agree in writing that the Board shall do so, and the amount, unless otherwise determined, must be ascertained under the direction of the Board on a valuation made by a valuer or valuers appointed by the lord and tenant (*f*). But if the manorial rights to be compensated for consist only of heriots, rents, and licences at fixed rates to demise or to fell timber, or the land to be enfranchised is not rated for the relief of the poor at a greater amount than the net annual value of £30, the valuation must be made by a valuer appointed by the justices at petty sessions holden for the division or place in which the manor or the greater part of it is situate, unless either party to the enfranchisement gives notice that he desires the valuation to be made by a valuer or valuers appointed by the lord and tenant, in which case such party must pay the additional expenses caused by that mode of valuation (*g*). When a valuer is appointed by justices, a justice who is a lord of the manor must not take part in the appointment (*h*). Before entering upon his duties a valuer or umpire must make a declaration as prescribed by the Act (*i*).

Under certain circumstances the Board may extend the time within which the lord or the tenant may appoint a valuer, and in certain cases the Board may appoint a valuer or umpire, as the case may be, for either the lord or the tenant, or both (*k*).

On the application of either the lord or the tenant the Board may remove a valuer or umpire for misconduct or for refusal or omission to act (*l*).

How valuation to be made.

315. The valuers are directed by the Act (*m*) to take into account for the purpose of their valuation facilities for improvement, customs of the manor, fines, heriots, reliefs, quit-rents, chief rents, forfeitures and all other incidents whatsoever of copyhold or customary tenure, and all other circumstances affecting or relating to the land included in the enfranchisement, and all advantages to arise therefrom, but not the value of escheats. The value is calculated as at the date of the notice to enfranchise (*n*).

(*e*) See note (*n*), p. 128, *post.*

(*f*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 5 (1), (2) (b), (t). For forms of appointment of valuers, see Encyclopædia of Forms, Vol. V., pp. 257 *et seq.*

(*g*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 5 (2) (c) (ii.).

(*h*) *Ibid.*, s. 5 (3). For form of appointment by justices, see Encyclopædia of Forms, Vol. V., p. 263.

(*i*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 5 (7)—(9).

(*k*) *Ibid.*, s. 5 (4), (6), where the circumstances are stated. For form of extension of time, see Encyclopædia of Forms, Vol. V., p. 201; and for form of appointment of valuer or umpire by the Board, see *ibid.*, p. 260.

(*l*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 5 (5).

(*m*) The scales of compensation for enfranchisement and allowance to valuers published by the Board under the authority of the Act are for guidance only, and may be varied by the Board from time to time (s. 66). For the scales at present in force, see Encyclopædia of Forms, Vol. V., p. 177.

(*n*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 6; and as to heriots, see

SECT. 2. Under the Copyhold Act, 1894.

Time.

The valuers must give their decision within forty-two days after their appointment; but the Board may by order extend the time within which the valuers are to give their decision, and if they do not give their decision within the time allowed and do not refer the matter to the umpire, the Board may direct the umpire to act as valuer. The umpire must give his decision within forty-two days after the matter is referred to him. The decision, in such form as the Board shall direct, with the details thereof, must be delivered to the Board, and copies of the decision must be delivered to the lord or to the tenant; and if the Board are of opinion that the valuation is imperfect or erroneous, they may remit it to the valuers or umpires, as the case may be, for reconsideration and correction (*o*).

Valuation by Board of Agriculture and Fisheries.

If the valuers or the umpire, as the case may be, fail to give a decision in accordance with the provisions of the Act, the Board, after due notice to the lord and tenant, determine the compensation to be made on enfranchisement (*p*); and in such case the Board may take such proceedings and make such inquiries as they shall think fit, and must take into consideration all matters which valuers are bound to take into consideration on a valuation under the Act, and must communicate the result in writing to the lord and tenant, and if necessary, after hearing objections, alter their determination (*q*).

Stamp duty.

A valuation under the Act is not chargeable with stamp duty (*r*).

SUB-SECT. 5.—*Expenses of Enfranchisement.*

By whom borne.

316. The expenses of compulsory enfranchisement under the Act are borne by the person who requires enfranchisement, but they are not due or recoverable until the Board of Agriculture and Fisheries (*s*) has certified that they have been properly incurred (*t*). The expenses of voluntary enfranchisement under the Act are borne by the lord and tenant in such proportion as they shall agree, or in default of agreement as the Board shall direct (*a*). Power is given to the Board to determine what expenses incidental to enfranchisement are to be considered to be expenses of enfranchisement (*b*), also to settle disputes connected with the

Padwick v. *Tyndale* (1858), 1 E. & E. 184; building and other restrictions, *Brabant* v. *Wilson* (1865), L. R. 1 Q. B. 44; leases, *Lingwood* v. *Gyde* (1866), L. R. 2 C. P. 72; settlements and development, *Arden* v. *Wilson* (1872), L. R. 7 C. P. 535; timber, *Reynold* v. *Woodham Walter* (*Lord of the Manor*) (1872), L. R. 7 C. P. 639; fines arbitrary, *Humphreys* v. *Blyther* (1878), cited in Brown on Enfranchisement (1903), p. 474.

(*o*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 7; and see *R.* v. *Land Commissioners of England* (1889), 23 Q. B. D. 59. For the forms of decision of the valuer or valuers, see Encyclopædia of Forms, Vol. V., p. 264, and of the umpire, *ibid.*, p. 267; and for the form of order extending the time for giving a decision, *ibid.*, p. 261.

(*p*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 7 (8).

(*q*) *Ibid.*, s. 7 (9).

(*r*) *Ibid.*, s. 58 (1).

(*s*) See note (*n*), p. 128, *post.*

(*t*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 34 (1), (2).

(*a*) *Ibid.*, s. 34 (3).

(*b*) *Ibid.*, s. 34 (4).

ascertainment and payment of such expenses (*c*); and such expenses may be recovered by action for debt, distress, or otherwise as provided by the Act (*d*).

How borne.

317. The expenses of enfranchisement may be charged upon the enfranchised land, including the expenses of such charge (*e*). Expenses incurred by the lord in proceedings under the Act, other than the expenses of a purchase of the tenant's interest, may be paid out of the compensation money or charged upon the manor, or on land settled to the same uses as the manor, or on a rentcharge arising under the Act. Such a charge must be by deed by way of mortgage, or by certificate of charge under the Act (*f*).

The expenses of an inquiry by the Board under the Act, including the expenses of witnesses and of the production of documents, are paid by the parties to the inquiry, and to such person and in such proportions as the Board may think proper (*g*). Office fees and all other expenses of the Board may be demanded from either the lord or the tenant requesting delivery of any award, deed, or order under the Act before such delivery (*h*). The expenses of and incidental to an application to the Board for the correction of any error in any award, deed, charge, or instrument made under the Act must be paid by such of the persons interested in the application as the Board shall direct (*i*).

SUB-SECT. 6.—*Award.*

Award by the Board of Agriculture and Fisheries.

318. Where enfranchisement is compulsory, and the compensation has been ascertained, the Board of Agriculture and Fisheries (*k*), having made such inquiries as they shall think proper and considered any application by the lord or the tenant, must proceed to make an award of enfranchisement on the basis of the compensation (*l*), and must state whether the compensation to be paid is a gross sum or a rentcharge, and in the latter case must charge the land therewith (*m*).

A copy of the proposed award must be sent by the Board to the tenant and the steward (*n*); and where the compensation is to be a gross sum, a receipt by the person entitled to payment must be produced to the Board before the award is confirmed (*o*).

Date of enfranchisement.

The award must state the date on which the enfranchisement is to take effect (*p*), and when confirmed a sealed copy

(*c*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 34 (5), (6).
(*d*) *Ibid.*, s.. 35.
(*e*) *Ibid.*, s. 36; interest must not exceed 5 per cent.
(*f*) *Ibid.*, s. 37.
(*g*) *Ibid.*, s. 55.
(*h*) *Ibid.*, s. 59.
(*i*) *Ibid.*, s. 60 (4).
(*k*) See note (*n*), p. 128, *post.*
(*l*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 10 (1). For the form of award, see Encyclopædia of Forms, Vol. V., p. 276.
(*m*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 10 (2).
(*n*) *Ibid.*, s. 10 (3).
(*o*) *Ibid.*, s. 10 (4).
(*p*) *Ibid.*, s. 10 (6). As to effect of death of tenant before confirmation, see *Myers* v. *Hodgson* (1876), 1 C. P. D. 609.

SECT. 2. Under the Copyhold Act, 1894.

thereof must be sent by the Board to the lord to be entered on the court rolls of the manor (*q*).

Confirmation of award.

319. The confirmation under the seal of the Board of an award and the execution by the Board of a deed of enfranchisement respectively are conclusive evidence of compliance with all the requirements of the Act as to proceedings to be taken before such confirmation or execution (*r*). An award or deed of enfranchisement cannot be impeached by reason of any omission, mistake, or informality therein or in any proceeding relating thereto, or of want of any notice or consent required by the Act, or of any defect or omission in any previous proceedings in the matter of enfranchisement (*s*). But the Board may at any time, if they think fit, on the application of any person interested in the award or deed of enfranchisement made under the Act, correct or supply any error or omission arising from inadvertence in that instrument; but notice must be previously given to the persons affected by the alteration, and in cases of voluntary enfranchisement consent in writing of persons affected by the alteration must be first obtained (*t*).

Correction.

Stamp duty.

An enfranchisement award is chargeable with the same stamp duty as would be chargeable in respect of an enfranchisement deed (*a*).

SUB-SECT. 7.—*Effect of Enfranchisement under the Act.*

Change of tenure.

320. As from the date of enfranchisement, the land enfranchised becomes of freehold tenure, but with the right of escheat remaining in the lord (*b*); it ceases to be subject to the custom of borough English or (except in Kent (*c*)) of gavelkind, or to any other customary mode of descent, or (except so far as regards any person married before the date at which enfranchisement is to take effect (*d*)) to any custom relating to dower, or freebench, or tenancy by the curtesy.

How estates and interests affected.

The land enfranchised is held under the same title as that under which it is held at the date at which enfranchisement takes effect, but without being subject to any estate, right, charge, or interest affecting the manor (*e*); and a mortgage of the copyhold interest becomes a mortgage of the freehold for a corresponding estate, but subject to any charge having priority by virtue of the Act (*f*); and all rights of persons, whether by will, settlement,

(*q*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 10 (5).
(*r*) *Ibid.*, s. 61 (1); and see *Kerr* v. *Pawson* (1858), 25 Beav. 394.
(*s*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 61 (2).
(*t*) *Ibid.*, s. 60. For form of application to be used in such a case, see Encyclopædia of Forms, Vol. V., p. 296.
(*a*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 58 (2).
(*b*) *Ibid.*, s. 21 (1) (a), (b).
(*c*) *Ibid.*, s. 21 (1) (c) (i.).
(*d*) *Ibid.*, s. 21 (1) (c) (ii.).
(*e*) Where the manor or manorial lands are subject to a fee farm rent or other charge, the Board of Agriculture and Fisheries (see note (*n*), p. 128, *post*) may transfer the charge, so far as it affects land in process of enfranchisement, to other lands or stock, under s. 56 of the Act.
(*f*) See p. 120, *ante*.

mortgage, or otherwise, continue to attach to the freehold as they did to the copyhold estate (*g*).

Transfer of charges.

Where, in the course of an enfranchisement under the Act, it is found that a manor or the lord's estate and interest in any land belonging thereto, which may be subject of enfranchisement, is subject to the payment of a fee farm rent or to any other charge, the Board may on the application of the person for the time being bound to make the payment or defray the charge, by order under their seal, direct that the rent or charge shall be a charge on any freehold land specified in the order of adequate value and held under the same title as the manor or land respectively, or on an adequate amount of Government stocks or funds to be transferred into court by the direction of the Board or into the names of trustees appointed by the Board, and from the sealing of such order the manor and land are discharged from the rent or charge, and the rent or charge is charged on the land or funds specified in that behalf in the order (*h*).

Commonable rights.

If at the date on which enfranchisement takes effect, the tenant is entitled to a commonable right in respect of the land enfranchised, such right is not destroyed by the enfranchisement, but continues to be attached to the freehold of the land enfranchised (*i*).

Mines etc.

The rights of the lord or the tenant, as the case may be, in any mines or minerals in or under the enfranchised lands, or the rights, franchises, royalties, or privileges of the lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl, are not affected by enfranchisement, unless with the express consent in writing of the lord or tenant entitled thereto; and in this connection the lord's steward has not without special authority power to consent on behalf of the lord (*k*). But the owner of the enfranchised land has notwithstanding any reservation of mines or minerals in the Act or the instrument of enfranchisement, and without prejudice to the rights of the lord in the minerals, full power to disturb or remove the soil, so far as is necessary or convenient, for the purpose of making roads or drains or erecting buildings or obtaining water on the land (*l*).

Easements.

A right of way or other easement in the land enfranchised for more effectually winning and carrying away mines or minerals under the land may, with the consent of the tenant, be granted or reserved to the lord; but such easement must be reserved by the award or granted in the deed of enfranchisement (*m*).

(*g*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 21; and see p. 113, *ante*.
(*h*) *Ibid.*, s. 56.
(*i*) *Ibid.*, s. 22. The lord will, nevertheless, be able to grant waste as copyhold by custom with the consent of the homage even though a deficiency of common be left (*Ramsey* v. *Cruddas*, [1893] 1 Q. B. 228, C. A.).
(*k*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 23. As to the effect of a deed of enfranchisement under the Copyhold Acts, 1841, 1843, and 1844 in respect of rights of fishing, common, and *profits à prendre*, see *Tilbury* v. *Silva* (1890), 45 Ch. D. 98.
(*l*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 23 (1).
(*m*) *Ibid.*, s. 24.

SECT. 2. Under the Copyhold Act, 1894.

SUB-SECT. 8.—*Powers and Duties of Board of Agriculture and Fisheries.*

General control.

321. Enfranchisement, whether compulsory or voluntary, under the Copyhold Act, 1894, is under the general supervision or control of the Board of Agriculture and Fisheries (*n*), who, except as to confirmation of agreements and awards and acts done under seal, may delegate their powers under the Act to any officer of the Board (*o*).

Appointment of trustees.

The Board may by order under the seal of the Board appoint original or new trustees for the purposes of the Act (*p*).

Settling boundaries.

Where difficulties arise as to the acreage or boundaries of the land to be enfranchised, the valuers or, in the last resort, the Board are to fix the identity of the land as provided by the Act (*q*).

Power to enter on the land.

Subject to reasonable notice being given and compensation made for injury done, a member or officer of the Board, a valuer or umpire appointed under the Act, and their agents and servants, may enter on the land proposed to be dealt with for the purposes of the Act (*r*). Any person obstructing or hindering a member or officer of the Board or a valuer or umpire acting under the powers of the Act will be liable on summary conviction to a fine not exceeding £5 (*s*).

Decision of the Board final except on matter of law.

If any objection is made or question arises in the course of the valuation in a compulsory enfranchisement under the Act in relation to any alleged custom or the evidence thereof or to any matter of law or fact material to the valuation or arising on the enfranchisement, the lord or tenant may require in writing that the question be referred to the Board; and, subject to appeal on a matter of law only, the decision of the Board is final (*t*). Appeal on a matter of law lies to the High Court by way of special case subject to the provisions of the Act (*u*). Any order or proceeding under the Act by or before or under the authority of the Board, or a conviction under the Act, cannot be quashed for want of form, and cannot be removed by *certiorari* or otherwise into the High Court or any other court (*a*).

Board may take evidence.

The Board or a valuer are empowered, by summons under the seal of the Board, to call for production of documents and to

(*n*) See Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), s. 1, under which the powers and duties of the Board of Agriculture referred to in the Copyhold Act, 1894 (57 & 58 Vict. c. 46), were transferred to the Board of Agriculture and Fisheries; and see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 536.

(*o*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 91.

(*p*) *Ibid.*, s. 32 (4).

(*q*) *Ibid.*, s. 52. For form of application to the Board to define boundaries, see Encyclopædia of Forms, Vol. V., p. 293.

(*r*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 92.

(*s*) *Ibid.*, s. 93.

(*t*) *Ibid.*, s. 53 (1). For form of application in such a case, see Encyclopædia of Forms, Vol. V., p. 294.

(*u*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 53 (2). The appeal is to a Divisional Court of the King's Bench Division of the High Court, the decision of which court is final (*ibid.*; and see R. S. C., Ord. 59, r. 1 (e)).

(*a*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 67. This does not affect the right of appeal given by s. 53 (2) of the Act.

examine witnesses for the purposes of the Act; but neither a lord nor a tenant summoned for such examination is bound to answer any question as to his title (*b*).

SUB-SECT. 9.—*Application of the Act to the Crown and Duchy of Lancaster.*

Crown and Duchy of Lancaster.

322. The Act generally does not apply to the Crown or the Duchy of Lancaster except so far as is expressly provided (*c*). The provisions of the Act relating to the grant of easements to a lord for mining purposes, the holding of customary courts although a copyhold tenant is not present, the making of grants of admittances out of the manor and out of court or without presentment by the homage, the entry of surrenders and wills on the court rolls, and the partition of lands of copyhold or customary tenure are expressly extended to manors and lands vested in His Majesty in right of the Crown or the said Duchy (*d*).

SECT. 3.—*Under Miscellaneous Statutes.*

SUB-SECT. 1.—*Lands Clauses Consolidation Act*, 1845.

Effect of enfranchisement.

323. Where copyholds and customary freeholds are purchased under the Lands Clauses Consolidation Act, 1845 (*e*), they may be enfranchised under ss. 96 and 97 of that Act. The conveyance must be entered on the court rolls; and from the date of enrolment of the conveyance the lands so taken are freehold, except that until actual enfranchisement the ancient fines, rents, heriots, and services remain payable to the lord (*f*). The rights of the lord on the one hand and of the purchaser on the other are fixed upon the termination of one month from the entry upon the land taken by the purchaser or of three months from the entry on the court rolls of the manor of the conveyance of the land to the purchaser, whichever shall last happen; and thereupon it becomes the duty of both parties to complete the enfranchisement of the land; and should enfranchisement not be completed until a later period, the compensation (*g*) to be paid to the lord under the Act will be based upon the value of the land at the time when the rights of the parties became fixed as aforesaid (*h*), but allowing to the lord any fruits of his manorial rights which may have accrued due before the actual completion of the enfranchisement (*i*).

The amount of the compensation must be found by arbitration, unless the parties agree (*k*).

(*b*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 54.
(*c*) *Ibid.*, ss. 95 (f), 96; and see p. 133, *post*.
(*d*) *Ibid.*, s. 98; and see *ibid.*, s. 68; and p. 133, *post*.
(*e*) 8 & 9 Vict. c. 18.
(*f*) *Ibid.*, ss. 95—97. As to the apportionment of heriots, fines, and quit-rents respecting land enfranchised under ss. 96—98 of the Act, see *Parker* v. *South Eastern Rail. Co.* (1853), 1 W. R. 316.
(*g*) As to what may be included in the compensation, see *Re Northumberland (Duke)* v. *Tynemouth Corporation*, [1908] W. N. 111.
(*h*) Interest on the compensation money becomes payable from this time (*ibid.*).
(*i*) *Lowther* v. *Caledonian Rail. Co.*, [1892] 1 Ch. 73, C. A.; *Leconfield (Lord)* v. *London and North Western Rail. Co.*, [1907] 1 Ch. 38, and see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 136 *et seq.*
(*k*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 96.

SECT. 3. Under Miscellaneous Statutes.

If necessary, a customary rent will be apportioned where a portion only of the tenement subject to such rents is compulsorily taken (*l*).

Enfranchisement by deed.

324. Enfranchisement is effected by deed; and where it is by deed poll under the hand and seal of the lord, he may execute it, notwithstanding that his interest in the manor is less than an estate in fee simple, but with a power to sell or convey the fee simple (*m*). Where the lord cannot or will not execute the deed of enfranchisement, the company or corporation seeking enfranchisement under the Act may declare enfranchisement by executing a deed poll to that effect (*n*).

SUB-SECT. 2.—*Settled Estates Act*, 1877.

Settled Estates Act, 1877.

325. Where copyholds are sold under the Settled Estates Act, 1877, the court may order an enfranchisement, the costs being paid out of the proceeds of sale (*o*).

SUB-SECT. 3.—*Settled Land Act*, 1882.

Settled Land Act, 1882.

326. Enfranchisement may also be effected under the Settled Land Act, 1882, where the settlement comprises a manor, by the sale by the tenant for life under the settlement of the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, so as to effect an enfranchisement (*p*); or, where the settlement comprises land of copyhold or customary tenure, by the investment of capital money arising under the Act in the purchase of the seignory of any part of the settled land, being freehold land, or in the purchase of the fee simple of any part of the settled land, being copyhold or customary land (*q*). Such enfranchisement may be made with or without a regrant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to, or held or enjoyed with, the land enfranchised or reputed so to be (*r*). The enfranchisement is effected by deed (*s*), and the consideration must be a sum of money which, where it is capital money arising under the Act, may be paid either to the trustees of the settlement or into court (*t*).

How compensation money raised.

Where money is required for enfranchisement under this Act, the tenant for life may raise it on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled lands or otherwise; and the money so raised is capital money arising under the Act (*u*).

(*l*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 98.
(*m*) *Ibid.*, s. 8. As to acknowledgment of right to production of documents, see *Re Agg-Gardner* (1884), 25 Ch. D. 600; and p. 17, *ante*.
(*n*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 97.
(*o*) 40 & 41 Vict. c. 18, s. 16, substantially re-enacting s. 11 of 19 & 20 Vict. c. 120; and see *Re Adair's Settled Estates* (1873), L. R. 16 Eq. 124.
(*p*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 3 (ii.).
(*q*) *Ibid.*, ss. 21 (v.), 22 (2).
(*r*) *Ibid.*, s. 4 (7).
(*s*) *Ibid.*, s. 38.
(*t*) *Ibid.*, s. 22.
(*u*) *Ibid.*, s. 18.

SUB-SECT. 4.—*Ecclesiastical Estates Act*, 1851.

SECT. 3. Under Miscellaneous Statutes.

Ecclesiastical Estates Act, 1851.

327. An ecclesiastical corporation (*a*) sole or aggregate, with the approval of the Church Estates Commissioners, may enfranchise any copyhold or customary land held of any manor belonging to such corporation under the power conferred upon it for that purpose by the Ecclesiastical Estates Act, 1851 (*b*). The conveyance or other assurance to be made upon enfranchisement must be in such form and manner as the Church Estates Commissioners direct, and must be confirmed by the Commissioners, and when so confirmed is conclusive evidence as to the propriety and validity of the enfranchisement (*c*); and all money received on any such enfranchisement must be paid into the Bank of England to such account as the said Commissioners direct (*d*). An apportionment can be made, if necessary, of any rent payable in respect of any lands a portion only whereof is enfranchised, and trustees can raise money for the purposes of enfranchisement, and make provision for the appointment of arbitrators and an umpire for the purposes of valuation upon such enfranchisement (*e*).

SUB-SECT. 5.—*Universities and College Estates Act*, 1898.

Universities and College Estates Act, 1898.

328. By the Universities and College Estates Act, 1898 (*f*), the universities of Oxford, Cambridge, and Durham, and the colleges therein respectively, including Christ Church, Oxford, and the colleges of Winchester and Eton, are authorised to exercise the powers of enfranchisement conferred upon a tenant for life by the Settled Land Acts, 1882 to 1890; and for that purpose the provisions of those Acts are made applicable with certain consequential modifications, but the power of enfranchisement cannot be exercised without the consent of the Board of Agriculture and Fisheries, and the money payable on any enfranchisement thereunder must be paid to that Board (*g*).

Where any manor belonging to the above-mentioned universities and colleges, except Christ Church, Oxford, is held by any person on a lease for a life or lives or for a term of years granted by any such university or college, that university or college and lessee jointly constitute the lord of the manor within the meaning of the Copyhold Act, 1894, and any rentcharge created under the

(*a*) As to what is an ecclesiastical corporation, see Episcopal and Capitular Estates Act, 1851 (14 & 15 Vict. c. 104), s. 11; Incumbents' Leases Reduction Act, 1861 (24 & 25 Vict. c. 105), s. 3; and title ECCLESIASTICAL LAW.

(*b*) 14 & 15 Vict. c. 104.

(*c*) *Ibid.*, s. 2.

(*d*) *Ibid.*, s. 6.

(*e*) Ecclesiastical Estates Act, 1854 (17 & 18 Vict. c. 116), ss. 2—4.

(*f*) 61 & 62 Vict. c. 55, which by s. 8 repeals s. 1 of the Universities and Colleges Estates Act, 1858 (21 & 22 Vict. c. 44), under which enfranchisements had theretofore been effected; see generally title EDUCATION.

(*g*) *Ibid.*, s. 1. The sections of the Settled Land Acts referred to are ss. 3, 4, 6—10, 12—14, 16, 17, 31, 34, and 55 of the Act of 1882 (45 & 46 Vict. c. 38); s. 4 of the Act of 1884 (47 & 48 Vict. c. 18); ss. 2 and 3 of the Act of 1889 (52 & 53 Vict. c. 36); ss. 5, 8, and 9 of the Act of 1890 (53 & 54 Vict. c. 69). See Parts I. and II. of Sched. I. of the Universities and College Estate Act, 1898 (61 & 62 Vict. c. 55).

SECT. 3. Under Miscellaneous Statutes.

Act on the enfranchisement of land held of that manor must be in favour of, and the compensation for the enfranchisement may be paid to, the person who at the date of the enfranchisement is entitled in possession to the profits of the manor, his executors and administrators, but without prejudice to any question as to the further disposal of any money paid in respect of the rentcharge or other compensation respectively (*h*).

Investment of money paid for enfranchisement.

Capital money paid as the consideration for enfranchisement must be applied in accordance with the Universities and College Estates Act, 1898, that is to say, in investment in the name of the Board of Agriculture and Fisheries on any securities in which trustees are by law authorised to invest trust money and the discharge, purchase, or redemption of incumbrances affecting the inheritance of land belonging to the university or college or of land tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit-rent, charged on or payable out of the land, payment for equality of exchange or partition of land belonging to the university or college, or in the purchase of the seignory of any part of the land belonging to the university or college, being freehold land, or in the purchase of the fee simple of any part of that land, being copyhold or customary land, or in the purchase of the reversion or freehold in fee of any part of the land belonging to the university or college being leasehold land held for years or life or years determinable on life, or in the purchase of land in fee simple or of copyhold or customary land or of leasehold land held for sixty years or more unexpired at the time of purchase subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein or in other land, or in the purchase, either in fee simple or for a term of sixty years or more, of mines and minerals convenient to be held or worked with land belonging to the university or college, or of any easement, right or privilege convenient to be held with that land for mining or other purposes, or in payment of costs, charges and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of the Universities and College Estates Acts, 1858 to 1880, or the Universities and College Estates Act, 1898 (*i*).

SUB-SECT. 6.—*Crown Lands Act*, 1829.

Crown manors.

329. As regards manors in which the Crown has any estate or interest whatsoever, a power to enfranchise is given by the Crown Lands Act, 1829 (*k*), to the Commissioners of Woods and Forests, whatever the estate of the Crown in the manor may be; and, so far as compulsory powers of enfranchisement are concerned, the Copyhold Act of 1894 does not apply (*l*). But the

(*h*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 78; but note that s. 1 of the Universities and College Estates Act, 1858 (21 & 22 Vict. c. 44), referred to at the end of the said section, was repealed by s. 8 of the Act of 1898 (61 & 62 Vict. c. 55).

(*i*) 61 & 62 Vict. c. 55, s. 2.

(*k*) 10 Geo. 4, c. 50; see further title CONSTITUTIONAL LAW, Vol. VII., pp. 194 *et seq.*

(*l*) 57 & 58 Vict. c. 46, ss. 95 (f), 96 (b).

Act of 1894 affords certain facilities in cases of voluntary enfranchisement by the Crown (*m*); thus, where there is an agreement to enfranchise, but a dispute arises as to the amount of compensation to be paid, the Commissioners may, at the request of the tenant, refer it to the Board of Agriculture and Fisheries to appoint a practical land surveyor to determine the amount, whose award is final.

In cases of Crown manors in remainder where the remainder is expectant on an estate of inheritance, if the Commissioners of Woods and Forests give their consent in writing, the provisions of the Copyhold Act, 1894, as to voluntary enfranchisement apply, subject to certain specific provisions therein contained (*n*); and the provisions of the Act apply in cases where the Crown holds in joint tenancy or coparcenary with a subject (*o*).

A record of all enfranchisements of lands held of Crown manors must be kept by the Keeper of Land Revenue Records and Enrolments (*p*).

SUB-SECT. 7.—*The Duchy of Lancaster Acts.*

Duchy of Lancaster.

330. The Chancellor and Council of the Duchy on behalf of His Majesty the Duke of Lancaster are empowered to treat and contract on the part of His Majesty with any person holding hereditaments of the nature of copyhold or customary tenure, or for which a fine on descent or alienation is payable to His Majesty, which are within and parcel of any of the honours, manors, or lordships of the Duchy, for the enfranchisement thereof (*q*). Where a manor is vested in the King in right of the Duchy of Lancaster either in possession or in remainder expectant on an estate less than an estate of inheritance, and either solely or in coparcenary with a subject, and the Chancellor and Council of the Duchy, in exercise of their powers, enter into negotiations for the enfranchisement of any land held of the manor, and cannot agree with the tenant as to the amount of the consideration money to be paid for the enfranchisement, the matter may be referred to the Board of Agriculture and Fisheries to appoint a practical land surveyor to determine the amount, whose award is final (*r*).

SUB-SECT. 8.—*Duchy of Cornwall Acts.*

Duchy of Cornwall.

331. As regards copyholds parcel of the Duchy of Cornwall, the power to effect enfranchisement is in the Duke, except as to conventionary tenements (*s*) holden of the assessionable manors, power to enfranchise which is vested in the council appointed under statute (*t*).

(*m*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), ss. 68—71 ; see title CONSTITUTIONAL LAW, Vol. VII., p. 196.

(*n*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 69.

(*o*) *Ibid.*, s. 71.

(*p*) *Ibid.*, s. 70.

(*q*) Stat. 19 Geo. 3, c. 45 ; stat. 27 Geo. 3, c. 34. For form of conveyance upon enfranchisement, see s. 6 of the earlier Act. As to the Duchy of Lancaster, see title CONSTITUTIONAL LAW, Vol. VII., pp. 217 *et seq.*

(*r*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 68.

(*s*) As to conventionary tenements, see *Rowe* v. *Brenton* (1828), 8 B. & C. 737 ; 3 Man. & Ry. (K. B.) 133.

(*t*) 7 & 8 Vict. c. 105. As to the Duchy of Cornwall, see title CONSTITUTIONAL LAW, Vol. VII., pp. 238 *et seq.*

SECT. 3. Under Miscellaneous Statutes.

The estates in and possessions of the Duchy of Cornwall are not affected by the Copyhold Act, 1894 (*a*).

SUB-SECT. 9.—*Charitable Trusts Acts*, 1853 *to* 1891.

Manors held on charitable trusts.

332. Where a manor is held on a charitable trust within the Charitable Trusts Acts, 1853 to 1891, and the lord is not authorised to make an absolute sale otherwise than under those Acts or the Copyhold Act, 1894, the consideration payable to the lord for enfranchisement, or for the redemption or sale of a rentcharge under the latter Act, may at the option of the lord, be paid to the Official Trustees of Charitable Funds in trust for the charity, and directions are given by the Copyhold Act, 1894, as to the application of the principal money so paid (*b*).

(*a*) 57 & 58 Vict. c. 46, s. 95 (g).
(*b*) *Ibid.*, s. 76. See title CHARITIES, Vol. IV., pp. 218, 279

COPYRIGHT AND LITERARY PROPERTY.

[N.B.—The law as to Foreign and Colonial Copyright is incorporated with the law as to English Copyright in the respective headings of this article.—EDS.]

PAGE

PART I. LITERARY COPYRIGHT - - - - - - - - 136

SECT. 1. IN GENERAL - - - - - - - - - 136

Sub-sect. 1. Proprietary Interest in Unpublished Works (including Letters) - - - - - 136
Sub-sect. 2. Copyright in Published Works - - - 139

SECT. 2. SUBJECT-MATTER OF COPYRIGHT - - - - - 142

Sub-sect. 1. Books in General - - - - - - 142
Sub-sect. 2. Maps, Charts, and Plans - - - - 144
Sub-sect. 3. Compilations, Catalogues and Advertisements - 145
Sub-sect. 4. Abridgments and Quotations - - - 146
Sub-sect. 5. Newspapers, Magazines and other Periodical Works - - - - - - - - - 147
Sub-sect. 6. Translations - - - - - - - 149
Sub-sect. 7. Lectures, Sermons, Speeches and Reports - 150

SECT. 3. REGISTRATION OF BOOKS, INCLUDING NEWSPAPERS - 152

SECT. 4. ASSIGNMENT - - - - - - - - - 157

SECT. 5. LICENCE TO PRINT - - - - - - - - 161

SECT. 6. INFRINGEMENT - - - - - - - - - 163

Sub-sect. 1. In General - - - - - - - 163
Sub-sect. 2. Remedies for Infringement of Copyright- - 165
Sub-sect. 3. Additional Remedies relating to Pirated Copies of Musical Compositions - - - - 170

SECT. 7. PROTECTION OF CERTAIN INTERESTS ACQUIRED PRIOR TO 1887 - - - - - - - - - - - 171

SECT. 8. CROWN COPYRIGHT - - - - - - - - 172

SECT. 9. UNIVERSITY COPYRIGHT - - - - - - - 174

SECT. 10. DELIVERY OF COPIES TO LIBRARIES - - - - 174

PART II. PERFORMING RIGHT IN DRAMATIC PIECES AND MUSICAL COMPOSITIONS - - - - - - 175

SECT. 1. IN GENERAL - - - - - - - - - - 175

Sub-sect. 1. Unpublished Works - - - - - 175
Sub-sect. 2. Published Works - - - - - - 177

SECT. 2. REGISTRATION - - - - - - - - - 179

SECT. 3. ASSIGNMENT - - - - - - - - - - 181

PAGE

PART II. PERFORMING RIGHT IN DRAMATIC PIECES AND MUSICAL COMPOSITIONS—*continued.*

SECT. 4. INFRINGEMENT - - - - - - - - 182
Sub-sect. 1. Dramatic Pieces - - - - - - 182
Sub-sect. 2. Musical Compositions - - - - - 186

PART III. ARTISTIC COPYRIGHT - - - - - - - 188

SECT. 1. IN GENERAL - - - - - - - - - 188
Sub-sect. 1. Unpublished Works - - - - - 188
Sub-sect. 2. Published Works - - - - - - 188

SECT. 2. PAINTINGS, DRAWINGS AND PHOTOGRAPHS - - - 191
Sub-sect. 1. In General - - - - - - - 191
Sub-sect. 2. Infringement - - - - - - - 196

SECT. 3. PRINTS, ENGRAVINGS AND LITHOGRAPHS - - - 200
Sub-sect. 1. In General - - - - - - - 200
Sub-sect. 2. Infringement - - - - - - - 203

SECT. 4. SCULPTURE, MODELS AND CASTS - - - - - 206

For Libel - - - - *See title* LIBEL AND SLANDER.
Newspapers and Printers - ,, PRESS AND PRINTING.
Theatres and Places of Entertainment - - ,, THEATRES, MUSIC HALLS AND SHOWS.
Trade Marks and Designs - ,, TRADE MARKS AND DESIGNS.

Part I.—Literary Copyright.

SECT. 1.—*In General.*

SUB-SECT. 1.—*Proprietary Interest in Unpublished Works (including Letters).*

Author's right in unpublished works.

333. The author, or his assignee, of any unpublished composition of a literary character has at common law a proprietary right or interest therein (*a*), which includes the right of withholding publication or of restraining others from publishing, and the right of acquiring by publication, a statutory right (*b*), hereinafter referred to as copyright (*c*).

(*a*) *Caird* v. *Sime* (1887), 12 App. Cas. 326, *per* Lord HALSBURY, L.C., at p. 337, and *per* Lord WATSON, at p. 344; *Mansell* v. *Valley Printing Co.*, [1908] 2 Ch. 441, C. A.; *Exchange Telegraph Co.* v. *Gregory & Co.* [1896] 1 Q. B. 147, C. A.; *Exchange Telegraph Co., Ltd.* v. *Central News, Ltd.*, [1897] 2 Ch. 48; *Kenrick* v. *Danube Collieries and Minerals Co.* (1891), 39 W. R. 473; *Exchange Telegraph Co.* v. *Howard and London and Manchester Press Agency* (1906), 22 T. L. R. 375; *Prince Albert* v. *Strange* (1849), 1 Mac. & G. 25; *Gilbert* v. *Star Newspaper Co.* (1894), 11 T. L. R. 4.

(*b*) *Donaldsons* v. *Beckett* (1774), 4 Burr. 2408, H. L.; *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815.

(*c*) As to the statutory period for which copyright is acquired, see p. 140, *post.* Until publication the proprietary right is unrestricted as to time.

SECT. 1. In General.

The author includes the writer or the compiler of the composition, or, in the case of a musical composition, the composer (*d*).

An assignee includes any person in whom the interest of the author before publication is vested, whether such interest is acquired by sale, gift, bequest, or by operation of law (*e*).

The proprietary interest above referred to extends to every literary composition, whether large or small (*f*), including books (*g*), letters (*h*), lectures (*i*), dramatic pieces and musical compositions (*k*), in manuscript or otherwise.

Extent of right.

334. The author has an indisputable right to his manuscript; he may withhold or he may communicate it, and, if he communicates it, he may limit the number of persons to whom it is to be imparted, and impose such restrictions as he pleases upon the use of it (*l*). This right exists at common law (*m*), and is distinct from copyright, which is created by statute and limited in respect of time.

Effect of author's death.

335. On the death of the author of any unpublished literary composition, the owner of the author's manuscript, or his assignee, has the right of withholding publication, or of acquiring copyright for the statutory period by publication (*n*).

(*d*) *Walter* v. *Lane*, [1900] A. C. 539 (reporter); *Nisbet & Co.* v. *Golf Agency* (1907), 23 T. L. R. 370 (compiler); *Springfield* v. *Thame* (1903), 89 L. T. 242 (sub-editor); see also *Tate* v. *Fullbrook*, [1908] 1 K. B. 821, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 826; *Tree* v. *Bowkett* (1896), 74 L. T. 77; *Shepherd* v. *Conquest* (1856), 17 C. B. 427; *Levy* v. *Rutley* (1871), L. R. 6 C. P. 523; *Wallenstein* v. *Herbert* (1867), 16 L. T. 453; *Wood* v. *Boosey* (1868), L. R. 3 Q. B. 223, Ex. Ch. For a form of assignment before publication, see Encyclopædia of Forms, Vol. V., p. 325.

(*e*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2; *Ward, Lock & Co., Ltd.* v. *Long*, [1906] 2 Ch. 550. As to what constitutes publication, see p. 139, *post*.

(*f*) *White* v. *Geroch* (1819), 2 B. & Ald. 298, *per* ABBOT, C.J., at p. 300.

(*g*) For the definition of "book," see p. 142, *post*.

(*h*) See p. 138, *post*.

(*i*) See p. 151, *post*.

(*k*) In *Bach* v. *Longman* (1777), 2 Cowp. 623, it was held that a musical composition was a writing within the earlier Copyright Act (stat. 8 Ann. c. 19); see also *Clementi* v. *Golding* (1809), 2 Camp. 28. Under the Berne Convention, 1886, protection is given to the unpublished works of authors of any of the countries of the union constituted by the Convention (Berne Convention, 1886, art. 2). The expression "unpublished works" includes dramatic pieces and musical compositions (*ibid.*, art. 4); see also International Copyright Act, 1886 (49 & 50 Vict. c. 33) s. 11, and Orders in Council thereunder; and p. 139, *post*.

(*l*) *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815, *per* Lord BROUGHAM, at p. 962.

(*m*) *Exchange Telegraph Co.* v. *Gregory & Co.*, [1896] 1 Q. B. 147, C. A.; *Exchange Telegraph Co., Ltd.* v. *Central News, Ltd.*, [1897] 2 Ch. 48; *Kenrick* v. *Danube Collieries and Minerals Co.* (1891), 39 W. R. 473; *Exchange Telegraph Co.* v. *Howard and the London and Manchester Press Agency* (1906), 22 T. L. R. 374; *Mansell* v. *Valley Printing Co.*, [1908] 1 Ch. 567; [1908] 2 Ch. 441, C. A.; *Prince Albert* v. *Strange* (1849), 1 Mac. & G. 25; *Gilbert* v. *Star Newspaper Co.* (1894), 11 T. L. R. 4.

(*n*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 3; *Macmillan & Co.* v. *Dent*, [1907] 1 Ch. 107, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 118: "Whatever were the common law rights of authors before publication, the necessary effect of s. 3 of the Act of 1842 is to determine those rights and to transfer them to the proprietor of the author's manuscript." Where more than one manuscript exists, the owner of the author's manuscript from which the work is first published is entitled to the copyright (Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 3; *Macmillan & Co.* v. *Dent*, *supra*).

SECT. 1. In General.

336. The right to restrain publication of a letter belongs to the writer of the letter, although the property in the paper itself belongs to the receiver. The latter may destroy it, if he pleases, or recover it by action, if it should pass out of his possession (*o*).

Letters.

The receiver of a letter may use it for any lawful purpose, but he must not publish it in its literary form without the writer's consent (*p*). He may, however, communicate the information obtained from its perusal, if the letter is not of a private and confidential character (*q*). In special circumstances, for the purpose of refuting personal imputations, the receiver of a letter may be permitted to publish it (*r*).

The writer of a letter marked "private and confidential" cannot prevent its production, if required for the purposes of justice, in a court of law (*s*).

In the case of letters written by a deceased person, the right of publication, and of acquiring copyright thereby, belongs to the owner of the author's manuscript (*t*). If, however, the letters are of a private and confidential character, publication may be restrained on the application of the personal representatives of the deceased (*u*).

Rights of foreign authors.

337. The right of an author in any unpublished literary or artistic work (*a*) belongs only to British subjects or residents within the British dominions (*b*), except where the provisions of a treaty or convention extend such right to foreigners resident abroad (*c*). But by treaty or convention an author belonging to any one of the foreign countries of the union constituted by the Berne

(*o*) *Pope* v. *Curl* (1741), 2 Atk. 341; *Thompson* v. *Stanhope* (1774), Amb. 737; *Queensberry* (*Duke*) v. *Shebbeare* (1758), 2 Eden, 329; *Oliver* v. *Oliver* (1861), 11 C. B. (N. S.) 139; *Howard* v. *Gunn* (1863), 32 Beav. 462; *Hopkinson* v. *Burghley* (*Lord*) (1867), 2 Ch. App. 447; *Lytton* (*Earl*) v. *Devey* (1884), 54 L. J. (CH.) 293; *Labouchere* v. *Hess* (1897), 77 L. T. 559, *per* NORTH, J., at p. 562; *Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345, *per* NORTH, J., at p. 352; *Thurston* v. *Charles* (1905), 21 T. L. R. 659.

(*p*) *Hopkinson* v. *Burghley* (*Lord*), *supra*.

(*q*) *Philip* v. *Pennell*, [1907] 2 Ch. 577.

(*r*) *Perceval* (*Lord and Lady*) v. *Phipps* (1813), 2 Ves. & B. 19; *Gee* v. *Pritchard* (1818), 2 Swan. 402.

(*s*) *Hopkinson* v. *Burghley* (*Lord*), *supra*.

(*t*) *Macmillan & Co.* v. *Dent*, [1907] 1 Ch. 107, C. A.

(*u*) *Ibid.*, *per* BUCKLEY, L.J., at p. 131; *Lytton* (*Earl*) v. *Devey*, *supra*; *Thompson* v. *Stanhope*, *supra*.

(*a*) The expression "literary or artistic work," as used in this article, includes any book, dramatic piece, or musical composition, any painting, drawing, or photograph, any print, engraving, or lithograph, and any article of sculpture, model, or cast; compare the definition in the International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 11.

(*b*) *Chappell* v. *Purday* (1845), 14 M. & W. 309, *per* POLLOCK, C.B., at p. 318. In *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815—a case relating to statutory copyright—Lord CRANWORTH, L.C., pointed out that under the word "subjects" are included all persons who are within the British dominions, and who thus owe to the Crown a temporary allegiance.

(*c*) The only copyright treaties or conventions with Great Britain are the Berne Convention, 1886, amended by the Additional Act of Paris, 1896, and a treaty with Austria-Hungary, made in 1893; see notes (*d*), (*e*), p. 139, *post*.

Convention, 1886 (*d*), or to Austria-Hungary (*e*), though resident abroad, is entitled to the protection of his unpublished literary or artistic works as if he were a British subject.

SUB-SECT. 2.—*Copyright in Published Works.*

338. The author of any book (*f*) published during his lifetime, or his assignee (*g*), acquires copyright for the statutory period (*h*) from the date of first publication (*i*).

Who may acquire copyright.

An assignee includes any person in whom the copyright becomes vested, whether it is acquired by sale, gift, bequest, or by operation of law (*j*)

339. Publication, with reference to copyright, means communication to the public (*k*). A literary composition may be published by being printed and sold, or gratuitously distributed to the public, or exposed for sale (*l*); by oral delivery to a public audience, in the form of a lecture, sermon, or speech (*m*); by public performance, in the case of a dramatic piece or musical composition (*n*).

Publication.

The issue of a document in printed form for private circulation is not publication (*o*); a lecture delivered by a professor to his pupils is not published (*p*), nor is a dramatic piece published by performance

(*d*) The Berne Convention, 1886, and the Additional Act of Paris, 1896, have been given full effect throughout the British dominions by Orders in Council (November 28, 1887, and March 7, 1898) under the International Copyright Act, 1886 (49 & 50 Vict. c. 33). The countries of the union constituted by the Berne Convention, 1886, are as follows:—Great Britain (including all British colonies and possessions), France (including Algeria and French colonies), Germany, Italy, Belgium, Spain, Switzerland, Tunis, Hayti, Luxembourg, Monaco, Norway, Japan, Denmark (and Faroe Islands), Sweden, and Liberia. Art. 2 of the Convention gives to foreign authors belonging to these countries the same rights as British subjects in respect of their unpublished literary or artistic works.

(*e*) Treaty between Great Britain and Austria-Hungary (April 24, 1893). The treaty applies to all British colonies and possessions with the exception of Canada, Cape Colony, Transvaal, Orange River Colony, New South Wales, and Tasmania (Orders in Council, April 30, 1894; February 2, 1895; May 11, 1895).

(*f*) For the meaning of "book," see p. 142, *post*.

(*g*) See p. 157, *post*.

(*h*) See p. 140, *post*.

(*i*) There is no copyright after publication except by statute (*Donaldsons* v. *Beckett* (1774), 4 Burr. 2408, H. L.).

(*j*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s 2. For a form of assignment, see Encyclopædia of Forms, Vol. V., p. 326.

(*k*) As distinguished from publication in libel or slander (*Macmillan & Co.* v. *Dent*, [1907] 1 Ch. 107, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 117). As to what amounts to publication, see *Exchange Telegraph Co., Ltd.*, v. *Central News, Ltd.*, [1897] 2 Ch. 48.

(*l*) *Boucicault* v. *Chatterton* (1876), 5 Ch. D. 267, C. A., *per* JAMES, L.J., at p. 275 (printed and issued to the public); *McFarlane* v. *Hulton*, [1899] 1 Ch. 884, *per* COZENS-HARDY, J., at p. 889 (offered for sale); *Blanchett* v. *Ingram* (1887), 3 T. L. R. 687 (gratuitous distribution).

(*m*) See p. 150, *post*.

(*n*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20; *Boucicault* v. *Delafield* (1863), 1 Hem. & M. 597.

(*o*) *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815, 962; *Kenrick* v. *Danube Collieries and Minerals Co.* (1891), 39 W. R. 473; *Prince Albert* v. *Strange* (1849), 2 De G. & Sm. 652.

(*p*) *Caird* v. *Sime* (1887), 12 App. Cas. 326.

SECT. 1. In General.

at a hospital before an audience solely composed of patients, nurses, doctors, and their guests (*q*).

Definition of copyright.

340. Copyright means the sole and exclusive right of multiplying copies of a book by printing or otherwise (*r*), and it extends throughout the British dominions (*s*).

Copyright is personal property, which passes upon the death of the proprietor to his personal representatives (*t*). In the case of a book first published after the death of the author, the copyright belongs to the owner of the author's manuscript from which the book is first published (*u*).

Statutory period.

341. The statutory period of copyright in a book, first published in the British dominions (*x*), is as follows:—In the case of a book published during the lifetime of the author, the period is the life of the author and seven years from the time of his death, or forty-two years from the date of first publication, whichever period is the longer (*a*). In the case of a book published after the author's death, the period is forty-two years from the date of first publication (*a*).

International copyright.

342. In the case of any literary or artistic work first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886 (*b*), the period of British copyright (*c*) is limited to the term of protection allowed by the law of the country in which the work is first published (*d*).

If publication is made simultaneously in two or more of the

(*q*) *Duck* v. *Bates* (1884), 13 Q. B. D. 843, C. A.

(*r*) Under stat. 8 Ann. c. 19, copyright meant the "sole right and liberty of printing," but now it is extended so as to include copying by other means than the press (Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2). The right of multiplying copies by printing includes the right to publish and sell (*Howitt* v. *Hall* (1862), 6 L. T. 348, *per* PAGE WOOD, V.-C., at p. 350); see *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418. As to the meaning of "book" see p. 142, *post*.

(*s*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 29; and see *Smiles* v. *Belford* (1877), 1 Ontario Appeals, 436.

(*t*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 25. Although the Act states in s. 2 that the words "personal representatives" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration, it is impossible to treat a next of kin entitled to administration as being the personal representative. The personal estate vests in the President of the Probate, Divorce and Admiralty Division until the grant is made; see title EXECUTORS AND ADMINISTRATORS.

(*u*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 3; and see *Macmillan & Co.* v. *Dent*, [1907] 1 Ch. 107, C. A.

(*x*) In the case of a book first published in a British possession (see note (*g*), p. 141, *post*) the copyright may be restricted, within the limits of such possession, by local Acts or Ordinances under the provisions of the International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8 (4).

(*a*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 3. For the case of joint authors, see *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627, C. A., *per* BOWEN, L.J., at p. 637 (artistic copyright).

(*b*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 3.

(*c*) Or performing right in the case of a dramatic piece or musical composition (Berne Convention, 1886, art. 9).

(*d*) *Ibid.*, art. 2; International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 2 (3); *Bauchet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73, *per* KEKEWICH, J., at pp. 77, 78.

countries of the union (*e*), the period of protection will be the shortest term allowed in those countries in which there is simultaneous publication (*f*).

Authors entitled to British copyright.

343. The author, or his assignee, of any book which is first published in (1) the United Kingdom, or (2) any British possession (*g*), or (3) any one of the foreign "countries of the union" constituted by the Berne Convention, 1886 (*h*), is entitled to British copyright, provided that as to (2) and (3) he complies with the necessary formalities and conditions (*i*).

There are no formalities prescribed by law as a condition of acquiring copyright in a book first published in the United Kingdom (*j*).

(*e*) See note (*d*), p. 139, *ante*.

(*f*) *Ibid.*

(*g*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8. As to the meaning of "British possession," see *ibid.*, s. 11.

(*h*) For the "countries of the union," see note (*d*), p. 139, *ante*.

(*i*) The author of every literary and artistic work first published in any one of the "countries of the union" is entitled, in the other countries, to the same copyright protection, save as to the statutory period (as to which see p. 140, *ante*), as the respective laws give to their own subjects; provided that the formalities and conditions of the country in which the work is first published have been complied with (Berne Convention, arts. 2, 3, amended by the Additional Act of Paris, 1896, and made operative throughout the British dominions by Orders in Council (November 28, 1887, and March 7, 1898) under the provisions of the International Copyright Act, 1886 (49 & 50 Vict. c. 33)). Such a work first published in any one of the foreign countries of the union is protected by English law, save as to the statutory period (as to which see p. 140, *ante*), as if it had been first published in the United Kingdom (Order in Council, 1887, s. 3); but the author, having complied with the formalities and conditions of the country of origin, is not required to fulfil the formalities and conditions prescribed by English law (*Sarpy* v. *Holland*, [1908] 2 Ch. 198, C. A., *per* COZENS-HARDY, M.R., at p. 207; *Hanfstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q. B. 1; *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q. B. 347, C. A.).

Under the Berne Convention, 1886, art. 2, if the author did not belong to one of the countries of the union, the copyright could only be acquired by assignment to a publisher established in one of the countries of the union; but by the Additional Act of Paris, 1896, art. 2 is amended, and the copyright now vests in the author irrespective of his nationality (Order in Council, March 7, 1898). Norway and Sweden are the only countries of the union which have not acceded to this amendment.

Similar provisions to those of the Berne Convention, 1886, as amended by the Additional Act, 1896, are contained in the treaty between Great Britain and Austria-Hungary (1893); see note (*e*), p. 139, *ante*.

The author of a dramatic piece or musical composition is similarly protected as to his performing right (Berne Convention, 1886, art. 9).

The author of any literary or artistic work first published in any foreign country other than (1) a country of the union constituted by the Berne Convention, 1886, or (2) Austria-Hungary, is not entitled to any British copyright or performing right therein (International Copyright Act, 1844 (7 Vict. c. 12), s. 19); but he can acquire British rights by simultaneous publication in one of the countries of the union or in Austria-Hungary.

(*j*) Neither the delivery of copies to the British Museum and the other libraries, nor registration at Stationers' Hall, is essential to British copyright. The failure to deliver copies renders the publisher liable to a penalty (Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 6, 8, 10); see p. 175, *post*). Registration is necessary before bringing an action, but the omission to register does not affect the copyright (*Warne* v. *Lawrence* (1886), 54 L. T. 371); see pp. 152 *et seq.*, *post*.

SECT. 1. In General.

Infringement of international copyright.

344. Any action or proceedings for infringement, or for any offence relating to copyright (*k*), must be brought in the country where the infringement or offence is committed, even though the offender be a British subject and resident in the United Kingdom (*l*).

In the case of any literary or artistic work first published in any one of the foreign "countries of the union" constituted by the Berne Convention, 1886, which is entitled to British copyright protection, all the remedies for infringement provided by the English law are available to the proprietor of the copyright (*m*), suing in England, notwithstanding that they may be more extensive than those allowed in the country where the work is first published (*n*).

Proof of foreign and colonial copyright.

345. Where it is necessary to prove the existence or proprietorship of copyright in any literary or artistic work first published in one of the foreign countries of the union constituted by the Berne Convention, 1886, an extract from the foreign register, or a certificate (*o*) or other document, authenticated by the official seal of a minister of State of such country, or by the official seal or signature of the British consul, is admissible as evidence of the facts therein stated in all English courts and proceedings (*p*). An extract from a colonial register duly authenticated is admissible in evidence in like manner (*q*).

SECT. 2.—*Subject-matter of Copyright.*

SUB-SECT. 1.—*Books in General.*

Definition.

346. The word "book" (*r*) includes every volume, part or division of a volume (*s*), pamphlet (*t*), sheet of letterpress (*u*),

(*k*) Or of the performing right in a dramatic piece or musical composition; see pp. 182 *et seq.*, *post*.

(*l*) "*Morocco Bound*" *Syndicate, Ltd.* v. *Harris*, [1895] 1 Ch. 534.

(*m*) Or the proprietor of the performing right in the case of a dramatic piece or musical composition; see pp. 182 *et seq.*, *post*.

(*n*) *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73. Registration at Stationers' Hall is not necessary; see p. 152, *post*.

(*o*) The certificate shows that the formalities and conditions prescribed by the law of the country where the work is first published have been complied with (Berne Convention, 1886, art. 11).

(*p*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 7.

(*q*) *Ibid.*, s. 8 (2).

(*r*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2. The definition includes dramatic pieces and musical compositions in print or manuscript, as to which see pp. 177, 178, *post*.

(*s*) The phrase "separately published" has been taken to apply to the entire definition. Each part that is separate and clearly distinguished in the volume itself is separately published within the meaning of s. 2 (*Johnson* v. *Newnes* (*George*), *Ltd.*, [1894] 3 Ch. 663, *per* ROMER, J., at p. 669; *Lamb* v. *Evans*, [1893] 1 Ch. 218, C. A., at p. 223). In *Lawrence and Bullen, Ltd.* v. *Aflalo*, [1904] A. C. 17, the question as to the meaning of separately published was raised, but not decided. It involves considerable doubt and difficulty (*ibid.*, *per* Lord HALSBURY, L.C., at p. 22).

An author may have copyright in part of a book, even though he has not copyright in the whole (*Cary* v. *Longman* (1801), 1 East, 358, *per* Lord KENYON, C.J., at p. 360; *Low* v. *Ward* (1868), L. R. 6 Eq. 415; *Leslie* v. *Young & Sons* [1894] A. C. 335). A supplement of a newspaper, though not physically attached to it, is part of the newspaper or "book" (*Comyns* v. *Hyde* (1895), 72 L. T. 250). The author of a book may have copyright in the letterpress, and the copyright in the illustrations may belong to another (*Petty* v. *Taylor*, [1897] 1 Ch. 465, *per* KEKEWICH, J., at p. 475); see p. 198, *post*.

(*t*) See *Walter* v. *Howe* (1881), 17 Ch. D. 708.

(*u*) There is copyright in a newspaper as a sheet of letterpress (*ibid.*; *Cate* v. *Devon*

sheet of music (*x*), map, chart, or plan (*a*) separately published (*b*).

Extent of copyright.

347. Copyright is in the written form of expression. It has reference to some literary composition (*c*), and does not extend to ideas, or schemes, or systems, or methods (*d*). It has nothing to do with the originality or literary merits of the author (*e*). There is no copyright in an opinion, but, if it is in writing, there may be copyright in the form and language in which it is expressed (*f*).

Titles.

348. The name or title of a book is not the subject-matter of copyright, unless, in form and language, it constitutes a literary composition of the author (*g*).

and Exeter Constitutional Newspaper Co. (1889), 40 Ch. D. 500, 503; *Walter* v. *Lane*, [1900] A. C. 539, *per* Lord DAVEY, at p. 551). A card containing letterpress representing the face of a barometer is not a sheet of letterpress (*Davis & Co.* v. *Comitti* (1885), 54 L. J. (CH.) 419). But a Christmas card is within the definition (*Hildesheimer and Faulkner* v. *Dunn & Co.* (1891), 64 L. T. 452); and so also is a sheet of illustrations forming a trade catalogue (*Davis* v. *Benjamin*, [1906] 2 Ch. 491).

(*x*) In *Hime* v. *Dale* (1803), cited 2 Camp. 28, Lord ELLENBOROUGH doubted whether a song published on a single sheet of paper was protected by stat. 8 Ann. c. 19, because a book meant in common acceptation a plurality of sheets. In *Clementi* v. *Golding* (1809), 2 Camp. 25, protection was accorded to such a sheet, and by the Copyright Act, 1842 (5 & 6 Vict. c. 45), a sheet of music is expressly included in the definition of a book.

A phonographic record of a song or musical composition is not a sheet of music (*Newmark* v. *National Phonograph Co. and Edison Manufacturing Co.* (1907), 23 T. L. R. 439; and see *Boosey* v. *Whight*, [1900] 1 Ch. 122, C. A.).

(*a*) For the meaning of "map, chart, or plan," see pp. 144, 145, *post*.

(*b*) For the meaning of "separately published," see note (*s*), p. 142, *ante*.

(*c*) *Chilton* v. *Progress Printing and Publishing Co.*, [1895] 2 Ch. 29, C. A., *per* Lord HALSBURY, at p. 33; composition is in new matter or new arrangement (*Barfield* v. *Nicholson* (1824), 2 Sim. & St. 1, *per* KINDERSLEY, V.-C., at p. 7).

(*d*) *Hollinrake* v. *Truswell*, [1894] 3 Ch. 420, *per* DAVEY, L.J., at p. 427. An album for holding photographs with pictorial borders and descriptions is a book in form only, and is not the subject of copyright (*Schove* v. *Schminckè* (1886), 33 Ch. D. 546); compare *Cable* v. *Marks* (1882), 52 L. J. (CH.) 107, where a card cut in shape to cast a shadow, resembling that portrayed in Mr. Holman Hunt's picture "Ecce Homo" with verses by Longfellow, was held not to be a "book," the plaintiff being the inventor of a trick, and not the author of a literary composition; *Page* v. *Wisden* (1869), 20 L. T. 435, where a line in a scoring sheet with the words "runs at the fall of each wicket" was held not capable of copyright, a particular mode of ruling a book not constituting an object of copyright; and see *Wyatt* v. *Barnard* (1814), 3 Ves. & B. 77 (specifications of patents); *Kenrick* v. *Danube Collieries and Minerals Co.* (1891), 39 W. R 473 (mining report); *Chilton* v. *Progress Printing and Publishing Co., supra; Fournet* v. *Pearson, Ltd.* (1897), 14 T. L. R. 82, C. A. (sporting selections).

(*e*) *Walter* v. *Lane*, [1900] A. C. 539, *per* Lord DAVEY, at p. 552. The word "original" is not used with reference to a book in the Copyright Act, 1842 (5 & 6 Vict. c. 45); compare Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1, in which the words are, "The author . . . of every original painting, drawing, or photograph."

(*f*) *Chilton* v. *Progress Printing and Publishing Co., supra, per* LINDLEY, L.J., at p. 34.

(*g*) In *Weldon* v. *Dicks* (1878), 10 Ch. D. 247, MALINS, V.-C., held that the title of a book is part of the book and as much the subject of copyright as the book itself; and see *Mack v. Peter* (1872), L. R. 14 Eq. 431. The decision in *Weldon* v. *Dicks, supra*, was considered by the Court of Appeal in *Dicks* v. *Yates* (1881), 18 Ch. D. 76, C. A., where it was remarked that the Vice-Chancellor did not distinguish "passing-off" (that is, selling a book under a title calculated to produce the

SECT. 2. Subject-matter of Copyright.

There is no copyright in the name of a newspaper or periodical, but the adoption of the name, or a similar name, by another newspaper may be restrained on the ground that it is misleading to purchasers (*h*). The plaintiff must show, however, that his property would be injured by the similarity of the name (*i*). The same principle is applicable to novels and every kind of book (*k*).

Nom de plume.

The adoption of a *nom de plume*, which is identified with a particular writer, may be restrained for the same reason, but it is not a subject for copyright (*l*).

Where copyright refused.

349. There is no copyright in a book which is unfit for sale on the ground of immorality (*m*), blasphemy (*n*), or sedition (*o*). And the court may refuse protection to a literary composition containing false statements intended to deceive the public (*p*).

SUB-SECT. 2.—*Maps, Charts, and Plans.*

How far copyright.

350. The proprietor of copyright in a map, chart, or plan separately published must register it as a "book" under the Copyright Act, 1842 (*q*), before he can sue for infringement; but it need not be registered under the Fine Arts Copyright Act, 1862 (*r*), relating to "artistic works" (*s*).

impression that it is the work of someone other than the author), which is a violation of a common law right, from an infringement of statutory copyright; and from the judgments it may be inferred that, as a general rule, there cannot be any copyright in the name of a book; see also *Schove* v. *Schmincké* (1886), 33 Ch. D. 546; *Kelly* v. *Byles* (1880), 13 Ch. D. 682, C. A.

(*h*) *Licensed Victuallers' Newspaper Co.* v. *Bingham* (1888), 38 Ch. D. 139, C. A.; *Walter* v. *Emmott* (1885), 54 L. J. (CH.) 1059, C. A.; *Bradbury* v. *Beeton* (1869), 39 L. J. (CH.) 57; *Maxwell* v. *Hogg* (1867), 2 Ch. App. 307; *Kelly* v. *Hutton* (1868), 3 Ch. App. 703; *Kelly* v. *Byles*, *supra*, *per* BACON, V.-C., at p. 690. When the property or goodwill of a newspaper is sold, it is a transfer of the right to continue publication under the known title (*Platt* v. *Walter* (1867), 17 L. T. 159); see also *Ingram* v. *Stiff* (1859), 33 L. T. (o. s.) 195, C. A.; *Metzler* v. *Wood* (1878), 8 Ch. D. 606, C. A.

(*i*) *Borthwick* v. *Evening Post* (1888), 37 Ch. D. 449, C. A. As to "passing off" generally, see title TRADE AND TRADE UNIONS.

(*k*) *Hutchings* v. *Sheard*, [1881] W. N. 20.

(*l*) *Landa* v. *Greenberg* (1908), 24 T. L. R. 441; *Millar* v. *Taylor* (1769), 4 Burr. 2303, *per* Lord MANSFIELD, C.J., at p. 2405: "An author's name ought not to be used against his will. It is an injury by a faulty, ignorant and incorrect edition to disgrace his work and mislead the reader."

(*m*) *Stockdale* v. *Onwhyn* (1826), 5 B. & C. 173; *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73; see also *Poplett* v. *Stockdale* (1825), 2 C. & P. 198; *Byron* (*Lord*) v. *Dugdale* (1823), 1 L. J. (o. s.) (CH.) 239, where a doubt existed as to the character of the work, and the court dissolved an *ex parte* injunction, leaving the plaintiff to assert his legal rights by action.

(*n*) *Lawrence* v. *Smith* (1822), 1 Jac. 471; *Murray* v. *Benbow* (1822), 1 Jac. 474, n.; compare *Cowan* v. *Milbourn* (1867), L. R. 2 Exch. 230.

(*o*) *Hime* v. *Dale* (1803), cited 2 Camp. 28; *Southey* v. *Sherwood* (1817), 2 Mer. 435.

(*p*) *Slingsby* v. *Bradford Patent Truck and Trolley Co.*, [1905] W. N. 122; *Hayward Brothers* v. *Lely & Co.* (1887), 56 L. T. 418; *Wright* v. *Tallis* (1845), 1 C. B. 893. But deceit is necessary (*Seeley* v. *Fisher* (1841), 11 Sim. 581).

(*q*) 5 & 6 Vict. c. 45.

(*r*) 25 & 26 Vict. c. 68.

(*s*) *Stannard* v. *Lee* (1871), 6 Ch. App. 346; compare *Stannard* v. *Harrison* (1871), 24 L. T. 570. Prior to 1842 maps were considered as "artistic works,"

Engravings, prints, or designs of a "map, chart, or plan" forming part of a volume are protected as a book, if the copyright in them belongs to the proprietor of the copyright in the letterpress. But if the copyright in the "map, chart, or plan" belongs to a different proprietor, independent registration is necessary (*t*).

Maps and charts.

351. The word "map" is not confined to what is popularly known as a map, namely, a geographical map, and the word "chart" is not limited to what is commonly called a chart, namely, a map of a portion of the seas showing the rocks, soundings, and similar information for the use of navigators (*a*). An anatomical or physiological plan of the human frame may be protected. But a cardboard pattern of a sleeve, with scales for measurement and descriptive words, is not within the definition. Such an instrument might be the subject-matter of a patent, but it is not the subject of copyright (*b*).

The face of a barometer is not a "chart" or "plan," and therefore not within the definition of a book (*c*).

Accidental resemblances.

352. The rule relating to "compilations" (*d*) is applicable to maps, and if one person publishes a geographical map, and another person by his own labour makes a map of the same locality which is almost a facsimile, it is not an infringement of copyright (*e*).

SUB-SECT. 3.—*Compilations, Catalogues and Advertisements.*

How far copyright.

353. A compilation may be the subject-matter of copyright (*f*). When a book is compiled from information available to anyone, a subsequent compiler is not entitled to copy from the book, but he must go to the common sources of information (*g*).

but now they are within the category of books (*Stannard* v. *Lee* (1871), 6 Ch. App. 346, *per* JAMES, L.J., at p. 348). As to the meaning of "separately published," see note (*s*), p. 142, *ante*.

(*t*) *Petty* v. *Taylor*, [1897] 1 Ch. 465; *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267; followed in *Marshall & Co.* v. *Bull* (1901), 85 L. T. 77, C. A. See, further, p. 198, *post*.

(*a*) *Hollinrake* v. *Truswell*, [1894] 3 Ch. 420, C. A., *per* DAVEY, L.J., at p. 427.

(*b*) *Ibid.*, at p. 426.

(*c*) *Davis & Co.* v. *Comitti* (1885), 54 L. J. (CH.) 419; see note (*d*), p. 143, *ante*.

(*d*) See *infra*.

(*e*) *Wilkins* v. *Aikin* (1810), 17 Ves. 422, *per* Lord ELDON, L.C., at p. 425; *Matthewson* v. *Stockdale* (1806), 12 Ves. 270.

(*f*) Information derived from time-tables issued to the public by railway companies, selected, condensed, and arranged in a compilation involving independent labour, is entitled to protection (*Leslie* v. *Young & Sons*, [1894] A. C. 335; see also *Mawman* v. *Tegg* (1826), 2 Russ. 385; *Wilkins* v. *Aikin* (1810), 17 Ves. 422; *Exchange Telegraph Co.* v. *Gregory & Co.*, [1896] 1 Q. B. 147; *Ager* v. *Collingridge* (1886), 2 T. L. R. 291; *Lewis* v. *Fullarton* (1839), 2 Beav. 6; *Jarrold* v. *Houlston* (1857), 3 K. & J. 708).

(*g*) In the case of a dictionary, map, guide-book, or directory, where there are certain objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done (*Kelly* v. *Morris* (1866), L. R. 1 Eq. 697, *per* PAGE WOOD, V.-C., at p. 701; and see *Matthewson* v. *Stockdale*, *supra*; *Morris* v. *Ashbee* (1868), L. R. 7 Eq. 34; *Bailey* v. *Taylor* (1824), 3 L. J. (O. S.) (CH.) 66; *Nisbet & Co.* v. *Golf Agency* (1907), 23 T. L. R. 370):

SECT. 2. **Subject-matter of Copyright.**

When authors have written upon the same subject, and have derived their information from common sources, it is necessary, in order to prove infringement, to show that substantial passages from the plaintiff's work have been actually copied, or copied with mere colourable alterations (*h*).

Directories etc.

There may be copyright in a street directory (*i*), in a list of bills of sale and deeds of composition with creditors (*k*), in the arrangement and headings of a page of advertisements in a newspaper (*l*), in a trade catalogue or list of articles for sale (*m*).

Digests.

There may be copyright in a digest or summary of legal proceedings, or in the form in which the principles of a judgment are expressed in the headnote of a reported case (*n*).

Part of work.

The author of a compilation may be entitled to copyright in part of the work, even though he has not an exclusive right to the whole (*o*). Annotations and additions to a non-copyright work may be protected (*p*).

SUB-SECT. 4.—*Abridgments and Quotations.*

Abridgments.

354. An abridged edition of a book is protected by a copyright independent of that in the original work, if the substance of the original work is expressed in language substantially different, so that the abridgment is the result of intellectual effort, and not mere copying (*q*).

The abridgment must be real condensation, and not mere extracts of the essential parts constituting the chief value of the

Morris v. *Wright* (1870), 5 Ch. App. 279; *Ager* v. *Peninsular and Oriental Steam Navigation Co.* (1884), 26 Ch. D. 637.

(*h*) *Pike* v. *Nicholas* (1869), 5 Ch. App. 251 (same passages quoted from older writers); *Spiers* v. *Brown* (1858), 6 W. R. 352; *Moffat and Paige* v. *Gill & Sons* (1902), 86 L. T. 465, C. A. (selection of illustrative passages in annotated edition of Shakespeare).

(*i*) *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697.

(*k*) *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A.; *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), 40 Ch. D. 500.

(*l*) *Lamb* v. *Evans*, [1893] 1 Ch. 218, C. A.

(*m*) *Davis* v. *Benjamin*, [1906] 2 Ch. 491; *Hotten* v. *Arthur* (1863), 32 L. J. (CH.) 771; *Bland* v. *Hiam, Times*, 16th January, 1873; *Grace* v. *Newman* (1875), L. R. 19 Eq. 623; *Maple & Co.* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369, C. A. (overruling *Cobbett* v. *Woodward* (1872), L. R. 14 Eq. 407); *Collis* v. *Cater, Stoffell and Fortt* (1898), 78 L. T. 613. As to fraudulent catalogues, see *Slingsby* v. *Bradford Patent Truck and Trolley Co.*, [1905] W. N. 122.

(*n*) *Butterworth* v. *Robinson* (1801), 5 Ves. 709; *Sweet* v. *Benning* (1855), 16 C. B. 459. For other infringements of copyright in law reports, see *Hodges* v. *Welsh* (1840), 2 I. Eq. R. 266; *Butterworth* v. *Kelly* (1888), 4 T. L. R. 430.

(*o*) *Cary* v. *Longman* (1801), 1 East, 358, *per* Lord KENYON, C.J., at p. 360; *Lamb* v. *Evans*, *supra*, *per* LINDLEY, L.J., at p. 223.

(*p*) *Mason* v. *Murray* (1777), cited 1 East, 360 (Gray's Poems); *Tonson* v. *Walker* (1752), cited 1 East, 359 ("Paradise Lost" with Dr. Newton's notes).

(*q*) *Gyles* v. *Wilcox* (1740), 2 Atk. 141, *per* Lord HARDWICKE, at p. 143; *D'Almaine* v. *Boosey* (1835), 1 Y. & C. (EX.) 288; *Tonson* v. *Walker* (1752), 3 Swan. 672; *Bell* v. *Walker* (1785), 1 Bro. C. C. 451; but compare *Tinsley* v. *Lacy* (1863), 1 Hem. & M. 747, *per* PAGE WOOD, V.-C., at p. 751.

original work (*r*). If a book is colourably shortened only, it is an evasion of the statute, and cannot be called an abridgment (*s*).

The abridgment must represent a legitimate use of the prior publication in the fair exercise of a mental operation deserving the character of an original work (*a*).

Fair quotation.

355. Quotation of extracts from a book is necessary for the purpose of review, comment, or criticism, and is permissible within reasonable limits; but if carried to the extent of manifesting piratical intention, it may be restrained (*b*). Quotation must be fair and *bonâ fide;* if extracts of a substantial character are made under the pretence of quotation, so as to be likely to interfere with the sale of the original work, such infringement may be restrained (*c*).

SUB-SECT. 5.—*Newspapers, Magazines and other Periodical Works.*

How far copyright.

356. Any periodical work, which includes a newspaper (*d*), review, magazine, encyclopædia or work published in a series of books or parts (*e*), is protected as a book (*f*). All articles, stories and other literary contributions to such publications are similarly protected (*g*).

There is also copyright in news, that is to say, in the literary composition or form of expression by which information relating to current events of the day is conveyed (*h*). It is only in the manner of expressing news that copyright exists (*i*).

(*r*) *Dickens* v. *Lee* (1844), 8 Jur. 183.

(*s*) *Gyles* v. *Wilcox* (1740), 2 Atk. 141, *per* Lord HARDWICKE, at p. 142; *Re Newbery* (1774), Lofft, 775.

(*a*) *Wilkins* v. *Aikin* (1810), 17 Ves. 422, *per* Lord ELDON, L.C., at p. 426; *Cary* v. *Kearsley* (1802), 4 Esp. 169; *Dickens* v. *Lee*, *supra* (work of fiction); *Spiers* v. *Brown* (1858), 6 W. R. 352; see also Berne Convention, 1886, art. 10.

(*b*) *Mawman* v. *Tegg* (1826), 2 Russ. 385, *per* Lord ELDON, L.C., at p. 393; *Roworth* v. *Wilkes* (1807), 1 Camp. 97; *Bohn* v. *Bogue* (1846), 10 Jur. 420; *Bell* v. *Whitehead* (1839), 8 L. J. (CH.) 141.

(*c*) *Wilkins* v. *Aikin*, *supra;* *Whittingham* v. *Wooler* (1817), 2 Swan. 428; *Dodsley* v. *Kinnersley* (1761), Amb. 403; *Cary* v. *Kearsley* (1802), 4 Esp. 169; *Scott* v. *Stanford* (1867), L. R. 3 Eq. 718; *Walter* v. *Steinkopff*, [1892] 3 Ch. 489, *per* NORTH, J., at p. 494; *Pike* v. *Nicholas* (1869), 5 Ch. App. 251; *Campbell* v. *Scott* (1842), 11 Sim. 31; *Wyatt* v. *Barnard* (1814), 3 Ves. & B. 77; *Maxwell* v. *Somerton* (1874), 22 W. R. 313; *Smith* v. *Chatto* (1874), 31 L. T. 775.

(*d*) As to registration of newspapers, see p. 154, *post.*

(*e*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18.

(*f*) See note (*u*), p. 142, *ante.*

(*g*) *Johnson* v. *George Newnes, Ltd.*, [1894] 3 Ch. 663; *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A.; *Lamb* v. *Evans*, [1893] 1 Ch. 218, C. A. As to places of publication of a newspaper, see *McFarlane* v. *Hulton*, [1899] 1 Ch. 884.

(*h*) *Walter* v. *Steinkopff*, *supra*, *per* NORTH, J., at p. 495, where it was held that even a general custom among journalists to allow one newspaper to copy from another on certain conditions, on condition, for instance, of acknowledging the source, was no defence to an action for infringement of copyright. As to the common law right in news before publication, see *Exchange Telegraph Co.* v. *Howard and London and Manchester Press Agency* (1906), 22 T. L. R. 374. As to the liability of the printer and the publisher of a newspaper containing a copyright lecture, see p. 151, *post.*

(*i*) *Springfield* v. *Thame* (1903), 89 L. T. 242.

SECT. 2. Subject-matter of Copyright.

Who is entitled to copyright.

357. The publisher (*j*) of any periodical work (*k*) or book (*l*) who employs a person to write any article, story, or other literary composition for publication in such work or book, and who has paid him for the same, is entitled to the copyright, as if he were the author, subject to the limitation in certain cases mentioned hereafter (*m*), provided that there is no express term in the agreement to the contrary effect, and that there are no special circumstances from which such a term might be reasonably inferred (*n*).

The agreement between the publisher and author need not be in writing (*o*). The author may expressly reserve either the copyright, or the right to publish in a separate form (*p*); or there may be circumstances from which an intention to reserve either of such rights may be inferred (*q*).

Where the only material facts are the employment and the payment, there is a presumption that the copyright is the property of the publisher (*q*); but the fact of payment alone is not sufficient to give the copyright to the publisher (*r*), nor is a contract to pay sufficient; proof must be given that the contributor was paid (*s*), and the payment must be in full (*t*).

Right of proprietor.

358. In the case of contributions to reviews, magazines, and other periodical publications of a like nature, the copyright of the publisher under his agreement of employment is of a limited character. His copyright lasts for the whole of the statutory period, but he is not at any time entitled to publish the literary composition in a separate form (*u*) without the consent of the author or his assigns (*w*).

(*j*) The word "publisher" as used in this article includes any person who projects, conducts, and carries on, or is the proprietor of, any periodical work, or work published in a series of books or parts, or any book whatsoever; see Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18; *Ward, Lock & Co., Ltd.* v. *Long*, [1906] 2 Ch. 550, *per* KEKEWICH, J., at p. 560. If the publisher fails to publish the author is entitled to sue on a *quantum meruit* (*Planché* v. *Colburn* (1833), 8 Bing. 14, Ex. Ch.); and compare *Gollancz* v. *Dent* (1903), 88 L. T. 358. The author is also liable to be sued if he fails to supply the work ordered (*Gale* v. *Leckie* (1817), 2 Stark. 107).

(*k*) For the definition of periodical work, see p. 147, *ante*.

(*l*) The word "book" is not to be construed *ejusdem generis* with periodical work (*Ward, Lock & Co., Ltd.* v. *Long*, *supra*, *per* KEKEWICH, J., at p. 560).

(*m*) See *infra*.

(*n*) *Lawrence and Bullen, Ltd.* v. *Aflalo*, [1904] A. C. 17.

(*o*) *Ibid.* For forms of agreement, see Encyclopædia of Forms, Vol. V., pp. 344 *et seq.*

(*p*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18; see note (*u*), *infra*.

(*q*) *Lawrence and Bullen, Ltd.* v. *Aflalo*, *supra*; *Sweet* v. *Benning* (1855), 16 C. B. 459.

(*r*) *Walter* v. *Howe* (1881), 17 Ch. D. 708.

(*s*) *Brown* v. *Cooke* (1846), 16 L. J. (CH.) 140.

(*t*) *Ward, Lock & Co., Ltd.* v. *Long*, *supra*, *per* KEKEWICH, J., at p. 561; *Collingridge* v. *Emmott* (1887), 57 L. T. 864.

(*u*) "In a separate form" means as a single book by itself, or in conjunction with other matter, but separately from the periodical (*Mayhew* v. *Maxwell* (1860), 1 John. & H. 312; *Smith* v. *Johnson* (1863), 4 Giff. 632). The Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18, provides for "two separate copyrights in the same work, a copyright in respect of the publication of the articles in the newspaper and copyright in respect of the publication as a separate book" (*Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A., *per* COTTON, L.J., at p. 535). The right to publish separately is not "copyright" until publication in separate form; and, therefore, the author can sue for infringement during the twenty-eight years (see p. 149, *post*) without registration (*Mayhew* v. *Maxwell*, *supra*; *Murray* v. *Maxwell* (1860), 3 L. T. 466).

(*w*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18.

On the other hand, the author after the expiration of twenty-eight years from the first publication of his literary composition in the periodical is entitled to publish it in a separate form for fourteen years (*x*).

Right of author.

During the twenty-eight years the author has the right of restraining others from publishing his composition in a separate form (*a*), and at the end of the twenty-eight years he can acquire a limited copyright in separate form by publication (*b*). His interest in copyright before publication is assignable (*c*).

International copyright.

359. Serial stories and tales published in newspapers and periodicals in any of the countries of the union constituted by the Berne Convention, 1886, are protected in the United Kingdom; but articles on political questions, news, and miscellaneous information in foreign newspapers may be reproduced. Other articles, provided that the sources from which they are taken are acknowledged, are not protected, unless the foreign newspaper or periodical contains an express declaration prohibiting their reproduction (*d*).

SUB-SECT. 6.—*Translations.*

Extent of copyright.

360. Copyright in a book first published in the United Kingdom does not include the exclusive right of translation (*e*). It is probable that the only way to obtain such right is for the author to make a translation, and so acquire protection for the translation as if it were an original work (*f*).

On the other hand, the author of a book first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886 (*g*), has the exclusive right of translation within the British dominions (*h*), provided that (1) he belongs to one of the countries of the union, and (2) the translation is published within ten years after the first publication of the original work (*i*). The

(*x*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18.

(*a*) *Mayhew* v. *Maxwell* (1860), 1 John. & H. 312.

(*b*) *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C.A.

(*c*) See p. 157, *post*. The publisher may publish in separate form with the consent of the author or his assigns during the twenty-eight years (Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18).

(*d*) Berne Convention, 1886, art. 7, amended by Additional Act of Paris, 1896; see p. 150, *post*.

(*e*) Under the Copyright Act, 1905 (Commonwealth of Australia, No. 25 of 1905), the owner of copyright in a book is given the exclusive right of translation in Australia and Tasmania if certain conditions are complied with; but there is no provision in the Imperial Copyright Acts expressly giving British authors the exclusive right of translation in their own country.

(*f*) *Munshi Shaik Abdurruhman* v. *Mahomed Shirazi* (1890), 14 Indian Law Reports, Bombay Series, 586; *Macmillan* v. *Khan Bahadur Shamsal Ulama M. Zaka* (1895), 19 Indian Law Reports, Bombay Series, 557. If a book in which there is British copyright is translated into a foreign language, and an unauthorised person retranslates the book into English, it is an infringement of the British copyright (*Murray* v. *Bogue* (1853), 22 L. J. (CH.) 457).

(*g*) For the "countries of the union," see note (*d*), p. 139, *ante*.

(*h*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 5; Berne Convention, 1886, art. 5, amended by Additional Act of Paris, 1896, art. 5. Norway and Sweden have not acceded to this amendment.

(*i*) The ten years, as well as the period of protection, begin to run from

SECT. 2. Subject-matter of Copyright.

right of translation is subject to the condition that the author has complied with the conditions and formalities prescribed by law in the country in which the original work was first published (*k*).

The right of translation includes the right of having a translation made; and authorised translations are protected as original works (*l*).

The author of a translation of any book first published in a foreign country outside the union, or of a book in which there is no copyright, may acquire copyright in his work, if it is first published in one of the countries of the union, and the conditions and formalities prescribed by law in that country are complied with (*m*).

A translation need not be an absolutely literal translation. It is entitled to protection if it is substantially a translation, even if there are omissions from, and additions to, the original work (*n*).

Newspapers etc.

361. Articles on political questions, news of the day, or miscellaneous information in a newspaper or periodical published in a foreign country of the union constituted by the Berne Convention, 1886, may be reproduced in translation in the United Kingdom, without the consent of the author or editor (*o*).

Translations of any other articles in such newspaper or periodical may, if their source is acknowledged, be reproduced in the United Kingdom, unless the author or editor shall have expressly declared in the newspaper or periodical itself in which it has been published that the right of reproduction is prohibited (*p*). Such prohibition is sufficient, in the case of periodicals, if it is indicated in general terms at the beginning of each number (*q*). On the other hand, translations of serial stories, including tales in a newspaper or periodical published in one of the foreign countries of the union constituted by the Berne Convention, 1886, may not be reproduced in the United Kingdom without the consent of the authors or their lawful representatives (*r*).

SUB-SECT. 7.—*Lectures, Sermons, Speeches and Reports.*

Lectures Copyright Act, 1835.

362. The author of any lecture (*s*) publicly delivered, or his assignee, is entitled to the exclusive right of printing and publishing

December 31st of the year in which the original work was first published (Berne Convention, 1886, art. 5).

(*k*) *Ibid.*, arts. 2, 5; Additional Act of Paris, 1896, art. 5; and see p. 157, *post*.

(*l*) Additional Act of Paris, 1896, art. 5; International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 5 (3).

(*m*) *Burnett* v. *Chetwood* (1720), cited 2 Mer. 441; *Wyatt* v. *Barnard* (1814), 3 Ves. & B. 77, where it was held that the translation of a non-copyright foreign work is entitled to protection; and see note (*i*), p. 141, *ante*.

(*n*) *Lauri* v. *Renad*, [1892] 3 Ch. 402, C. A., *per* KEKEWICH, J., at p. 415; *Wood* v. *Chart* (1870), L. R. 10 Eq. 193; and see p. 184, *post*.

(*o*) Berne Convention, 1886, art. 7, amended by Additional Act of Paris, 1896.

(*p*) *Ibid.*; and see p. 149, *ante*.

(*q*) *Ibid.*

(*r*) *Ibid.*

(*s*) "Lecture" includes a sermon or speech which is communicated to the public by oral delivery (*Caird* v. *Sime* (1887), 12 App. Cas. 326, *per* Lord HALSBURY, L.C., at p. 338).

the composition, provided he gives two days' notice in writing of his intention to deliver the same to two magistrates living within five miles of the place where the lecture is delivered (*t*). Any person to whom the author has sold or otherwise disposed of the copy for the purpose of oral delivery, or for any other purpose, is an assignee (*a*).

Any member of the audience may take notes or make a copy of the literary composition delivered in the form of a lecture, but if due notice has been given he must not publish a lecture in print or otherwise (*b*); and leave to attend a lecture, on payment or otherwise, does not imply a licence to print and publish the lecture (*c*).

Remedies for infringement.

363. The penalty for printing or copying and publishing a lecture, of which the requisite notice has been given, is forfeiture of all copies and one penny for every sheet containing any part of the lecture. Any person who knowingly sells, publishes, or exposes any copies for sale is liable to similar penalties (*d*).

Such penalties are recoverable by action in the High Court of Justice. One moiety goes to the Crown, and the other moiety to the plaintiff (*e*).

The printer or publisher of any newspaper in which such lecture is printed and published is liable to the like forfeiture and penalties, unless he has obtained the leave of the author or his assigns (*f*).

Lectures not protected.

364. If a lecture, sermon, or speech is delivered in public without the requisite notice having been given, any person may make a copy or report of the same, and on publication becomes entitled to the copyright in his own report (*g*).

The reporter cannot, however, sue for infringement in respect of a similar report made by independent labour and not copied (*h*).

The protection given by the Lectures Copyright Act, 1835, does not apply in the case of lectures delivered in any university or public school or college, or on any public foundation, or by any person in virtue of any gift, endowment, or foundation (*i*), if it is first communicated to the public by oral delivery (*k*). But such lecture is protected as an unpublished literary composition if it

(*t*) Lectures Copyright Act, 1835 (5 & 6 Will. 4, c. 65), s. 5. For form of notice, see Encyclopædia of Forms, Vol. V., p. 325.

(*a*) Lectures Copyright Act, 1835 (5 & 6 Will. 4, c. 65), s. 1.

(*b*) The Lectures Copyright Act, 1835 (5 & 6 Will. 4, c. 65), does not expressly confer "copyright," *i.e.*, the exclusive right of multiplying copies (see p. 140, *ante*), but the exclusive right of "printing and publishing" the lecture (see p. 150, *ante*).

(*c*) *Ibid.*, s. 3.

(*d*) *Ibid.*, s. 1.

(*e*) *Ibid.*

(*f*) *Ibid.*, s. 2.

(*g*) *Walter* v. *Lane*, [1900] A. C. 539. The statement refers, of course, to a lecture which, prior to delivery, has not been published as a book.

(*h*) *Ibid.*

(*i*) Lectures Copyright Act, 1835 (5 & 6 Will. 4, c. 65), s. 5.

(*k*) *Caird* v. *Sime* (1887), 12 App. Cas. 326, *per* Lord HALSBURY, L.C., at p. 338.

SECT. 2. Subject-matter of Copyright.

is not delivered to a public audience (*l*), or, if it is first published in a printed form, it is protected as a book (*m*).

SECT. 3.—*Registration of Books, including Newspapers.*

Registration.

365. An author has copyright in his book without registration (*n*); but before an action can be brought by the author, or by any person (*o*) suing as proprietor of the copyright, he must be duly registered at Stationers' Hall (*p*). Registration may be made on the same day as the issue of the writ, provided it precedes the writ (*q*). The proprietor of the copyright can sue for infringements committed before the date of registration (*r*).

Registration is made in the registry book at Stationers' Hall upon the application of the proprietor of the copyright (*s*) in any published book, on payment of five shillings to the officer of the Stationers' Company (*a*).

An entry may be made of the proprietorship of the copyright, and of any assignment or licence affecting the copyright (*b*).

Particulars to be registered.

366. The entry in the register at Stationers' Hall must contain the following particulars (*c*):—

(1) The title of the book. The registered title must be the same as the published name (*d*). Change of title after registration does not make the registration invalid (*e*).

(2) The date of the first publication. The day, month, and year must be stated (*f*). The date must be that of the actual, not

(*l*) *Abernethy* v. *Hutchinson* (1825), 1 H. & Tw. 28; *Nicols* v. *Pitman* (1884), 26 Ch. D. 374; *Caird* v. *Sime*, (1887), 12 App. Cas. 326; and compare *Macklin* v. *Richardson* (1770), 2 Amb. 694.

(*m*) See p. 142, *ante*.

(*n*) *Warne* v. *Lawrence* (1886), 54 L. T. 371.

(*o*) An assignee must be registered before he can sue (*Liverpool General Brokers' Association* v. *Commercial Press Telegram Bureaux*, [1897] 2 Q. B. 1).

(*p*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 24 (proviso); *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), 40 Ch. D. 500, *per* NORTH, J., at p. 506; *Weldon* v. *Dicks* (1878), 10 Ch. D. 247, *per* MALINS, V.-C., at pp. 251, 252.

(*q*) *Warne* v. *Lawrence*, *supra*.

(*r*) *Goubaud* v. *Wallace* (1877), 36 L. T. 704.

(*s*) There cannot be any copyright until after publication, so that if the author of an unpublished work should assign his interest in it, the assignee cannot register himself as proprietor until the book is published (see p. 153, *post*).

(*a*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 13 For the form of application, see *ibid.*, Schedule, Form No. 2; Encyclopædia of Forms, Vol. V., p. 318.

(*b*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 11. For the form of entry of an assignment, see Encyclopædia of Forms, Vol. V., p. 319.

(*c*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 13; and see *ibid.*, Schedule, Form No. 3.

(*d*) *Collingridge* v. *Emmott* (1887), 57 L. T. 864; *Harris* v. *Smart* (1889), 5 T. L. R. 594, C. A.

(*e*) *Cate* v. *Devon and Exeter Constitutional Newspaper Co.*, *supra*.

(*f*) *Collingridge* v. *Emmott*, *supra*; *Low* v. *Routledge* (1864), 33 L. J. (CH.) 317; *Wood* v. *Boosey* (1867), L. R. 2 Q. B. 340; (1868) L. R 3 Q. B. 223, Ex. Ch.; *Mathieson* v. *Harrod* (1868), L. R. 7 Eq. 270; *Page* v. *Wisden* (1869), 20 L. T. 435.

intended, publication; any registration preceding publication is a nullity (*g*).

(3) The name and place of abode of the publisher (*h*). "The publisher" means the person who first published the book, not the person who happens to be the publisher at the time of registration (*i*). The firm's name is sufficient, and the names of the partners need not be entered (*k*). "The place of abode" does not necessarily mean the private residence; registration of the place of business (*l*), or of the place where communications should be addressed, if there is no British residence (*m*), is sufficient.

(4) The name and place of abode of the proprietor of the copyright. "The proprietor of the copyright" means the person who is proprietor at the time the registration is made (*n*). The entry need not show how the copyright passed from the author or original proprietor to the assignee (*o*).

Any omission or inaccuracy with respect to the requisite particulars renders the registration ineffectual, and is fatal to an action (*p*).

Time for registration.

367. No valid registration of a book can be made before it is published, because there is no proprietor of the copyright, which only comes into existence on the day of publication (*q*). Registration of the title of a newspaper or periodical, in anticipation of its production, will not enable the proprietor of the work to sue for infringement or prevent the use of the title (*r*). The registration of the first number of a newspaper or periodical, however, extends to subsequent issues, which, therefore, do not require registration. But copyright in any subsequent issue does not come into existence until such issue is actually published (*s*).

(*g*) *Henderson* v. *Maxwell* (No. 2) (1877), 5 Ch. D. 892; *Maxwell* v. *Hogg* (1867), 2 Ch. App. 307; see also *Thomas* v. *Turner* (1886), 33 Ch. D. 292, C. A.

(*h*) *Chappell* v. *Davidson* (1856), 18 C. B. 194; *Wooderson* v. *Tuck* (*Raphael*) *& Sons* (1887), 4 T. L. R. 57.

(*i*) *Weldon* v. *Dicks* (1878), 10 Ch. D. 247; *Coote* v. *Judd* (1883), 23 Ch. D. 727.

(*k*) *Weldon* v. *Dicks*, *supra*; *Rock* v. *Lazarus* (1872), L. R. 15 Eq. 104 (artistic copyright). But the full name of the firm must be registered (*Low* v. *Routledge* (1865), 13 L. T. 421, C. A.).

(*l*) *Nottage* v. *Jackson*, reported on this point (1883), 49 L. T. 339, *per* FIELD, J., at p. 340.

(*m*) *Lover* v. *Davidson* (1856), 1 C. B. (N. S.) 182. In the form of registration (Copyright Act, 1842 (5 & 6 Vict. c. 45), Schedule, Form No. 3) the "place of publication" is erroneously substituted for the "place of abode of the publisher."

(*n*) *Weldon* v. *Dicks*, *supra*; see also p. 155, *post*.

(*o*) *Ibid.*; *Liverpool General Brokers' Association* v. *Commercial Press Telegram Bureaux*, [1897] 2 Q. B. 1, *per* KENNEDY, J., at p. 3; *Graves' Case* (1869), L. R. 4 Q. B. 715 (artistic copyright); *Hildesheimer and Faulkner* v. *Dunn & Co.* (1891), 64 L. T. 452 (artistic copyright).

(*p*) See the cases cited *supra*, and on p. 152, *ante*; and *Wood* v. *Boosey* (1868), L. R. 3 Q. B. 223, Ex. Ch.

(*q*) *Henderson* v. *Maxwell* (No. 2) (1877), 5 Ch. D. 892; *Correspondent Newspaper Co.* v. *Saunders* (1865), 11 Jur. (N. S.) 540; *Talbot* v. *Judges* (1887), 3 T. L. R. 398; *Platt* v. *Walter* (1867), 17 L. T. 157; *Dicks* v. *Yates* (1881), 18 Ch. D. 76, C. A.

(*r*) *Hogg* v. *Maxwell* (1867), 2 Ch. App. 316; *Primrose Press Agency Co.* v. *Knowles* (1886), 2 T. L. R. 404; and see p. 144, *ante*.

(*s*) *Chappell* v. *Purday* (1843), 12 M. & W. 303; *Bradbury* v. *Sharp*, [1891] W. N. 143; *Reid* v. *Maxwell* (1886), 2 T. L. R. 790, C. A.

SECT. 3. Registration of Books, including Newspapers.

Newspapers etc.

368. In the case of newspapers, periodicals, and other works published in a series of books or parts (*t*), it is sufficient if the entry in the register contains the following particulars:—

(1) The title of the periodical (*a*);

(2) The date of first publication of the first volume, number, or part (*b*);

(3) The name and place of abode of the publisher (if he is not the proprietor of the copyright) (*c*);

(4) The name and place of abode of the proprietor of the copyright (*d*).

Serials.

369. Where stories or articles are published serially in a newspaper or periodical, or a book is published in parts, it is sufficient to register the title of the first of the series (*e*). But if the proprietor of a newspaper or periodical is the owner of the copyright in any article or serial published therein, and he has duly registered the newspaper or periodical at Stationers' Hall, it is not necessary that the article or serial should be separately registered in order to enable such proprietor to restrain separate publication (*f*).

Nor is separate registration necessary to enable the author to prevent the proprietor of the copyright from publishing his article or story in separate form (*g*). The action would be for an injunction to restrain publication in separate form and damages for infringing the author's right to publish separately (*h*).

New editions.

370. Registration of an early edition of a book is sufficient to cover subsequent editions, except as to new matter (*i*). A new edition is sometimes substantially a new work, and, if so, should be registered as such; but if it is merely a reprint of the earlier work, the entry in the register must contain the date of the first publication of the original edition (*k*).

(*t*) This includes encyclopædias, reviews, and magazines (Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 19).

(*a*) See p. 152, *ante*.

(*b*) See p. 152, *ante*. As to the meaning of "part" of a newspaper, see *Comyns* v. *Hyde* (1895), 72 L. T. 250; *Henderson* v. *Maxwell* (1876), 4 Ch. D. 163.

(*c*) See p. 153, *ante*.

(*d*) *Ibid.* The Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), requires newspapers to be registered, but this is a duty imposed upon the printers and publishers, whose default does not affect the owner of the copyright (*Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), 40 Ch. D. 500). The register is kept at Somerset House, and is quite distinct from the copyright register, which is at Stationers' Hall.

(*e*) *Johnson* v. *Newnes* (*George*), *Ltd.*, [1894] 3 Ch. 663; *Walter* v. *Howe* (1881), 17 Ch. D. 708; *Cate* v. *Devon and Exeter Constitutional Newspaper Co.*, *supra*.

(*f*) *Henderson* v. *Maxwell*, *supra*; *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A.

(*g*) *Mayhew* v. *Maxwell* (1860), 1 John. & H. 312; *Smith* v. *Johnson* (1863), 4 Giff. 632. As to the author's right of separate publication, see p. 149, *ante*.

(*h*) *Ibid.*

(*i*) *Hutchings* v. *Sheard*, [1881] W. N. 20; *Murray* v. *Bogue* (1852), 1 Drew 353, 365.

(*k*) *Thomas* v. *Turner* (1886), 33 Ch. D. 292, C. A.; *Murray* v. *Bogue*, *supra*.

SECT. 3. Registration of Books, including Newspapers.

Where a new edition contains additional matter, an entry of the date of publication of the new edition is sufficient registration in respect of the additional matter (*l*).

Extent of registration.

371. Registration of a book extends to every part of the book, including every print, design, or engraving, and all the illustrations or drawings, as well as the letterpress (*m*). Notwithstanding that the proprietor of the copyright in the prints has not complied with the formalities under the Engravings Act, 1734 (*n*), or that the proprietor of the copyright in the drawings has not registered under the Fine Arts Copyright Act, 1862 (*o*), he can sue for infringement if he is duly registered as proprietor of the copyright in the book under the Copyright Act, 1842.

Who may be registered.

372. Only the legal owner of the copyright can be effectively registered. Thus a trustee in whom copyright is vested is the person to be on the register and to maintain an action for infringement. If the beneficiary is registered as the proprietor of the copyright, an action is not sustainable by him (not being the legal owner), nor by the trustee (not being registered), nor by both together (*p*).

Similarly, where the copyright is vested in a company, and the managing director, as agent for the company, is registered proprietor, the latter cannot sue because he is not owner of the copyright, and the company cannot sue because it is not the registered proprietor (*q*). An assignment and fresh registration are necessary in order to proceed in such cases, and if an assignment cannot be obtained an application should be made to vary the entry in the register (*r*).

Assignment.

373. The registered proprietor of copyright can assign his interest, or any portion of it, by registering an assignment in the proper form (*s*), on payment of five shillings; and the assignment so entered is effectual in law, without stamp or duty (*t*).

Searches and inspection.

374. Any person is entitled to inspect the register at Stationers' Hall on payment of one shilling for every entry searched for or inspected, and may obtain a certified copy of any entry on payment of five shillings.

A certified copy of any entry is admissible evidence in all courts,

(*l*) *Hayward Brothers* v. *Lely & Co.* (1887), 56 L. T. 418.

(*m*) *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267, *per* PARKER, V.-C., at p. 275 (engravings of cartoons in *Punch*).

(*n*) *Ibid.*; *Bradbury* v. *Hotten* (1872), L. R. 8 Exch. 1 (woodcuts in volume of stories); *Grace* v. *Newman* (1875), L. R. 19 Eq. 623 (designs of tombstones); see pp. 201, 202, *post*.

(*o*) See p. 198, *post*.

(*p*) *London Printing and Publishing Alliance, Ltd.* v. *Cox*, [1891] 3 Ch. 291, C. A., *per* FRY, L.J., at p. 303.

(*q*) *Petty* v. *Taylor*, [1897] 1 Ch. 465.

(*r*) See p. 156, *post*.

(*s*) Copyright Act, 1842 (5 & 6 Vict. c. 45), Schedule, Forms Nos. 4, 5; and see *ibid.*, s. 11, and p. 159, *ante*.

(*t*) *Ibid.*, s. 13.

SECT. 3. Registration of Books, including Newspapers.

and in all summary proceedings, and is *primâ facie* proof of the proprietorship of the copyright, or of any assignment or licence. It may be rebutted, however, by other evidence (*a*).

Alteration of register.

375. A person aggrieved by any entry in the register at Stationers' Hall may apply by motion to the Kings' Bench Division for an order that the entry may be expunged or varied (*b*).

If the court is satisfied that the applicant has a substantial grievance with reference to the merits of the registered proprietor's title; it may expunge or vary the entry or direct an issue, or dispose of the question in some other way (*c*).

A person who has caused the entry to be made can apply for an order to have the entry expunged or varied (*d*).

If a person is registered as the proprietor of a non-copyright book, it is probable that any member of the public is a "person aggrieved" by the entry in the register, and may apply to have it expunged, on the ground that the assertion of proprietorship is inconsistent with the general right to make copies of the book (*e*).

Grounds of application.

It is not sufficient for the applicant to state that he is aggrieved, or to show that there are flaws in the title of the registered proprietor, or that the entry is false (*f*). On the other hand, it is not necessary that he should claim to be the proprietor of the copyright. It is, however, essential for him to show that the entry is inconsistent with some right which he sets up in himself or in some other person, or that the entry would interfere with the intended exercise of some right (*g*).

The court, upon an application in the manner indicated, may make an order for expunging, varying, or confirming the entry; and upon production of the order to the officer of the Stationers' Company any alteration required by the order must be made by him in the register at Stationers' Hall (*h*).

Where an entry in the register has been expunged, it is doubtful whether the court can order it to be restored (*i*).

(*a*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 11; *Lucas* v. *Cooke* (1880), 13 Ch. D. 872 (artistic copyright); *R.* v. *Willetts* (1906), 70 J. P. 127 (criminal prosecution for conspiracy); *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184.

(*b*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 14, amended by Statute Law Revision Act, 1893 (56 Vict. c. 14). An order to expunge or vary an entry in the register may be made in an action relating to copyright, but only if it is specifically asked for in the pleadings; if it is not so asked for, it will be necessary to proceed by independent motion (*Hole* v. *Bradbury* (1879), 12 Ch. D. 886, *per* FRY, J., at p. 899).

(*c*) *Graves' Case* (1869), L. R. 4. Q. B. 715, *per* BLACKBURN, J., at p. 721; *Re Red Letter New Testament* (*Authorised Version*) (1900), 17 T. L. R. 1; *Ex parte Bastow* (1854), 14 C. B. 631.

(*d*) *Ex parte Poulton & Son* (1884), 53 L. J. (Q. B.) 320.

(*e*) *Ex parte Davidson* (1856), 18 C. B. 297; *Chappell* v. *Purday* (1843), 12 M. & W. 303.

(*f*) *Graves' Case, supra; Ex parte Davidson, supra, per* WILLES, J., at p. 311.

(*g*) *Graves' Case, supra, per* HANNEN, J., at p. 724; *Ex parte Hutchins* (1879), 4 Q. B. D. 483, C. A.

(*h*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 14.

(*i*) *Chappell* v. *Purday, supra; Ex parte Davidson, supra.*

SECT. 3. Registration of Books, including Newspapers.

An appeal lies to the Court of Appeal from an order of the court made upon an application to expunge or vary any entry in the register (*k*).

False entries.

376. Any person who wilfully makes, or causes to be made, any false entry in the register at Stationers' Hall, or who wilfully produces, or causes to be tendered in evidence, a false copy of any such entry, is guilty of a misdemeanour, for which he may be indicted (*l*).

Any prosecution in respect of such misdemeanour must be commenced within twelve calendar months of the offence committed (*m*).

Books published outside United Kingdom.

377. Registration at Stationers' Hall is necessary before action in the case of a book first published in the United Kingdom, or in any British possession, in which the law of that possession does not provide for registration (*n*).

If a book is first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886 (*o*), and the formalities prescribed by the law of that country are complied with, the author can sue for infringement of his copyright within the British dominions, although the book is not registered at Stationers' Hall (*p*).

SECT. 4.—*Assignment.*

Assignment in general.

378. An author's proprietary right or interest in unpublished literary compositions, and the copyright in published books, may be assigned by the author, or his assignee, by way of gift, bequest, or sale; or these rights may be transferred by operation of law (*q*).

Death of author.

379. In the case of a book which is not published during the lifetime of the author, the author's proprietary right or interest therein may be the subject of bequest by will (*r*); but in the absence of such bequest, it passes on the death of the author to the owner of the author's manuscript (*s*).

The copyright in a book published during the lifetime of the author passes on the death of the copyright proprietor to the personal representatives of such proprietor (*t*). It may be the subject

(*k*) *Re Jude's Musical Compositions*, [1907] 1 Ch. 651, C. A.

(*l*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 12.

(*m*) Any proceeding against a public official with respect to registration must be commenced within six months of the act complained of, or, in the case of a continuing injury or damage, within six months after the ceasing thereof (*ibid.*, s. 26, amended by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61); see, further, title PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

(*n*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 24 (registration before action); International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8 (1), (2) (British possessions).

(*o*) For the countries of the union, see note (*d*), p. 139, *ante*.

(*p*) See note (*i*), p. 141, *ante*, and see *Hanfstaengl Publishing Co.* v. *Holloway*, [1893] 2 Q. B. 1; *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q. B. 347, C. A.

(*q*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2; see pp. 137, 139, *ante*.

(*r*) *Ibid.*

(*s*) *Ibid.*, s. 3; see p. 137, *ante*.

(*t*) *Ibid.*, s. 25; see p. 140, *ante*. Where an author agrees to write a book and dies before its completion, the contract is a personal one, and his executors are not liable under it (*Marshall* v. *Broadhurst* (1831), 1 Tyr. 348).

SECT. 4. Assignment.

of a bequest (*u*), or, in case of intestacy, it constitutes an asset which is available for distribution among the next of kin.

Bankruptcy of author.

380. On the bankruptcy of an author, his unpublished literary compositions in manuscript vest in the official receiver (*w*), but the property so acquired in the manuscript would probably not entitle him to publish the works without the author's consent (*x*).

The copyright in a published book vests, on the bankruptcy of the copyright proprietor, in the official receiver (*w*), and passes to the trustee of the bankrupt's estate, as assets for distribution among creditors.

Bankruptcy of publisher.

Where the trustee in the bankruptcy becomes the proprietor of copyright, subject to a pre-existing agreement containing a provision for payment of royalties to the author, and carries on the publishing business of the debtor, the author is not entitled to preferential payment out of money received from the sale of the book, but must prove in the bankruptcy as a creditor against the bankrupt's estate. His claim is for the damages he has sustained by the breach of the agreement (*a*).

Agreement to assign.

381. An agreement in writing to assign the copyright in a book before it is composed, though it contains no words of assignment, is enforceable in equity and is as binding as a direct assignment (*b*).

Implied assignment

382. An assignment of an author's proprietary right or interest in copyright may be implied from the relationship between the parties under an agreement of employment (*c*). Where a publisher or editor of a newspaper or periodical employs any person to write a book or to contribute any article or story, and pays him (*d*), the author *primâ facie* is held to assign his interest (*e*). In such a case, unless there is in the terms of the agreement a reservation of the copyright by the author, or unless there are special circumstances from which such reservation may be inferred (*f*), the publisher's right, before publication, is to prevent anyone else from

(*u*) Copyright Act, 1842 (5 & 6 Vict. c. 45).

(*w*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 68; see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 87, 144, 152; and see *Atcherley* v. *Vernon* (1723), 10 Mod. Rep. 518, 530.

(*x*) See pp. 136, 137, *ante*.

(*a*) *Re Grant Richards, Ex parte Warwick Deeping*, [1907] 2 K. B. 33; and see p. 160, *post*.

(*b*) *Ward, Lock & Co., Ltd.* v. *Long*, [1906] 2 Ch. 550. For the meaning of the expression "any book whatsoever," see *ibid., per* KEKEWICH, J., at p. 560; see also *Thombleson* v. *Black* (1837), 1 Jur. 198. The court will not decree specific performance of a contract to write a book (*Clarke* v. *Price* (1819), 2 Wils. (CH.) 157; distinguishing *Morris* v. *Colman* (1812), 18 Ves. 437). As to injunctions, see *Brooke* v. *Chitty* (1831), 2 Coop. *temp.* Cott. 216; *Brook* v. *Wentworth* (1797), 3 Anst. 881.

(*c*) *Lawrence and Bullen, Ltd.* v. *Aflalo*, [1904] A. C. 17, approving *Sweet* v. *Benning* (1855), 16 C. B. 459; and *Lamb* v. *Evans*, [1893] 1 Ch. 218, C. A. The agreement need not be in writing (*Lawrence and Bullen, Ltd.* v. *Aflalo, supra*); and see pp. 148, 149, *ante*.

(*d*) There is no implied assignment until payment (*ibid.*).

(*e*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18; *Grace* v. *Newman* (1875), L. R. 19 Eq. 623, *per* HALL, V.-C., at p. 626.

(*f*) *Lawrence and Bullen, Ltd.* v. *Aflalo, supra*; see pp. 148, 149, *ante*.

publishing; after publication, he is the proprietor of the copyright, and can restrain anyone from multiplying copies (*g*).

Form of assignment.

383. An assignment of copyright in a published book must be in writing (*h*), but it need not be by deed or attested by witnesses (*i*). The document may be of an informal character (*j*); the consent in writing of the proprietor of the copyright is all that is required, and it may be contained in letters. Such an assignment is liable to stamp duty (*k*).

A registered proprietor of copyright can assign his interest or any portion of his interest therein by making an entry in the register at Stationers' Hall, and the assignment so entered is effectual in law, without stamp or duty (*l*). A certified copy of the entry is *primâ facie* evidence of the assignment, but it may be rebutted by other evidence (*m*).

Effect of assignment.

384. By an assignment of copyright the author deprives himself of the control of his work, apart from express agreement, and the assignee can publish new editions with alterations so long as they are not of such a character as to injure the reputation of the author. The alterations may consist of condensation or omissions; but if new matter written by another person is added and the author's name appears upon the work, the publisher may be liable for damages on the ground of injury to the author by the work of another writer being "passed off" as his (*n*).

An assignment of copyright imposes no obligation on the part of the assignee to publish, unless it is a term of the agreement that the work shall be published by him. This is so even when the only consideration for the assignment is payment by royalty or a share of the profits (*o*).

(*g*) *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A., *per* CHITTY, J., at p. 430.

(*h*) *Hole* v. *Bradbury* (1879), 12 Ch. D. 886, *per* FRY, J., at p. 894; Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 15.

(*i*) *Leyland* v. *Stewart* (1876), 4 Ch. D. 419; *Cumberland* v. *Copeland* (1862), 1 H. & C. 194, Ex. Ch.; *Shepherd* v. *Conquest* (1856), 17 C. B. 427; *Eaton* v. *Lake* (1888), 20 Q. B. D. 378, C. A.; *Taylor* v. *Neville* (1878), 47 L. J. (Q. B.) 254, C. A. Under stat. 8 Ann. c. 19 assignment of copyright required attestation by two credible witnesses.

(*j*) *London Printing and Publishing Alliance, Ltd.* v. *Cox*, [1891] 3 Ch. 291, C. A.; *Lacy* v. *Toole* (1867), 15 L. T. 512; *Hazlett* v. *Templemore* (1866), 13 L. T. 593; and see *Robinson* v. *Illustrated London News* (1907), *Times*, April 26, 1907 (artistic copyright), where an account rendered by the artist for copyright in a picture was held sufficient.

(*k*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 54. It is stamped *ad valorem* on the consideration as a conveyance on sale (*ibid.*, Sched. I.); see title REVENUE.

(*l*) Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 11, 13; see p. 155, *ante*. If the assignment is not made by entry in the register, the assignee cannot sue until he is registered (*Liverpool General Brokers' Association* v. *Commercial Press Telegram Bureaux*, [1897] 2 Q. B. 1).

(*m*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 11; and see pp. 155, 156, *ante*.

(*n*) *Archbold* v. *Sweet* (1832), 5 C. & P. 219; *Humphreys* v. *Thomson & Co.*, (1908), *Times*, 1st May, 1908 (libel); *Lee* v. *Gibbings* (1892), 67 L. T. 263 (libel); *Cox* v. *Cox* (1853), 11 Hare, 118. As to "passing off," see p. 165, *post*; and, generally, title TRADE AND TRADE UNIONS.

(*o*) *Hole* v. *Bradbury*, *supra*, *per* FRY, J., at p. 895; compare *Gollancz* v. *Dent* (1903), 88 L. T. 358; *Nicholls* v. *Amalgamated Press* (1907), unreported, October 28, 1907. In the latter case the plaintiff assigned his copyright

SECT. 4.

Assignment.

An author, who has parted with his interest in copyright for an agreed amount, cannot restrain publication and sale of the work until the sum agreed upon is paid (*p*).

Liability for royalties.

An assignment of copyright, under an agreement which provides for the payment of royalties or a share of profits, may impose a personal obligation only on the assignee under the agreement. But if the agreement shows in terms an intention to charge the owner of the copyright for the time being with the payment of royalties or a share of profits, a subsequent assignee of the copyright who has notice of the agreement cannot evade liability on the ground that he was not a party thereto (*q*).

In the absence of special agreement to the contrary, the assignor of copyright is entitled, after the assignment, to continue selling such copies as were printed by him before the assignment and are remaining in his possession (*r*).

Charge.

385. The proprietor of copyright may charge his interest therein by way of mortgage (*s*).

Joint owners.

386. When copyright is the property of more persons than one, they are in the position of tenants in common and not joint tenants (*t*).

in certain songs to the defendant company, in consideration of a royalty to be paid on every copy sold by the company. The songs were published in the *Weekly Dispatch* with the knowledge and approval of the defendant company, and the plaintiff sought to recover royalties in respect of the publication and sales of the songs by the proprietors of the newspaper. WARRINGTON, J., held that the assignment of copyright was unconditional, except as to payment of royalties on sales by the defendant company, which was under no obligation to publish the songs; and that the plaintiff was not entitled to royalties on sales made by third parties, who were not agents of the defendant company.

(*p*) *Cox* v. *Cox* (1853), 11 Hare, 118.

(*q*) *Werderman* v. *Société Générale d'Électricité* (1881), 19 Ch. D. 246, 252, C. A. Such a case is analogous to that of partners who, on dissolution of the partnership, assign the assets charged with payment of an annuity to an outgoing partner; in that case, a purchaser of the assets with notice takes subject to the annuity (*ibid.*, *per* LUSH, L.J., at p. 257).

(*r*) *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418; and see p. 162, *post*.

(*s*) Where the owner creates a charge with a power of sale, and the mortgagee transfers his rights under the charge, this is not an assignment of the copyright, but only of the mortgage, and it is subject to the mortgagor's right of redemption. It would be otherwise if the mortgagee sold the copyright in exercise of the power of sale, which would pass the property and discharge the equity of redemption (*Re Jude's Musical Compositions*, [1907] 1 Ch. 651, 663, C. A.).

(*t*) *Powell* v. *Head* (1879), 12 Ch. D. 686, *per* JESSEL, M.R., at pp. 689—690; see also *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A.; *Stevens* v. *Wildy* (1850), 19 L. J. (CH.) 190. One of such part owners cannot grant a licence to a third party without the consent of the others, since one part owner cannot either lend or deal with the entirety of the property without the authority of the other part owners; but any one of them can maintain an action against a stranger for infringement of the entire copyright (*Lauri* v. *Renad*, [1892] 3 Ch. 402, C. A.; *Stevens* v. *Wildy*, *supra*). One part owner cannot exclude the other from the enjoyment of the common property, and it seems doubtful whether an injunction would be granted to restrain one part owner from multiplying copies of a book without the consent of the other, but in any case the part owner so acting would have to account to his co-owner in respect of profits arising therefrom (*Powell* v. *Head*, *supra*). For form of agreement between joint authors, see Encyclopædia of Forms, Vol. V., p. 347.

SECT. 4. Assignment.

387. Copyright is indivisible and cannot be partially assigned (*u*). In some cases, however, effect may be given to an agreement purporting to be a partial assignment of copyright by treating it as a licence (*a*).

SECT. 5.—*Licence to Print.*

Licence to print.

388. An author, or his assignee, may grant a licence to print and publish, at the same time retaining the copyright (*b*).

A licence is required to be in writing (*c*). If the licensor is registered proprietor of the copyright an entry of the licence in the register at Stationers' Hall is sufficient (*d*).

There may be circumstances under which the court will imply a licence. Thus, if the proprietor of copyright sells blocks from which copies are intended to be printed, he cannot sue the purchaser for infringement, relying on the absence of a consent in writing (*e*).

Kinds of licence.

A licence may be sole and exclusive. It may be restricted with respect to time or locality, or it may be limited to a particular edition (*f*), or to the right of publishing in serial or in volume form (*g*).

An exclusive licence is not a partial assignment of copyright (*h*). It is merely leave to do something which would otherwise be unlawful, and a contract not to give leave to anybody else to do the same thing (*i*). Consequently, a licensee cannot sue for infringement of copyright unless he joins the copyright proprietor as co-plaintiff in the action; but he can sue the copyright proprietor for damages for breach of contract if the latter gives a similar licence to another licensee (*j*).

(*u*) *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815, *per* Lord ST. LEONARDS, at p. 992; *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A., *per* COTTON, L.J., at p. 435.

(*a*) See *Howitt* v. *Hall* (1862), 6 L. T. 348, where the copyright was assigned for four years. It is a common practice so to assign colonial copyrights.

(*b*) *Marshall & Co., Ltd.* v. *Bull* (*A. H.*), *Ltd.* (1901), 85 L. T. 77, *per* BYRNE, J., at p. 80, affirmed in C. A. without reference to this point, *ibid.*

(*c*) *Hole* v. *Bradbury* (1879), 12 Ch. D. 886, *per* FRY, J., at p. 894; and see Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 15. For a form of licence, see Encyclopædia of Forms, Vol. V., p. 344.

(*d*) Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 11, 13; and see p. 152, *ante*.

(*e*) *Dennison* v. *Ashdown* (1897), 13 T. L. R. 226; *Cooper* v. *Stephens*, [1895] 1 Ch. 567, *per* ROMER, J., at p. 571; approved in *Marshall & Co., Ltd.* v. *Bull* (*A. H.*), *Ltd.*, *supra*.

(*f*) *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497, where it was held that there was no implied agreement by the author not to bring out a second edition until the first edition had been sold out. As to the meaning of "edition," see *Reade* v. *Bentley* (1858), 4 K. & J. 656, *per* PAGE WOOD, V.-C., at p. 667: "A new edition is published whenever, having in his store-house a certain number of copies, the publisher issues a fresh batch of them to the public." It is usual in practice to specify in the agreement between author and publisher the number of copies constituting an edition; see Encyclopædia of Forms, Vol. V., pp. 333, 337, 340, 343.

(*g*) *Re Jude's Musical Compositions*, [1907] 1 Ch. 651, C. A.; *Griffith* v. *Tower Publishing Co., Ltd. and Moncrieff*, [1897] 1 Ch. 21.

(*h*) *London Printing and Publishing Alliance, Ltd.* v. *Cox*, [1891] 3 Ch. 291, C. A., *per* VAUGHAN WILLIAMS, J., at p. 297.

(*i*) *Heap* v. *Hartley* (1889), 42 Ch. D., 461, C. A., *per* FRY, L.J., at p. 470; and compare *Guyot* v. *Thomson*, [1894] 3 Ch. 388, C. A.

(*j*) *Heap* v. *Hartley*, *supra*, at p. 469; *Warne* v. *Routledge*, *supra*; *Sweet* v. *Cater* (1841), 11 Sim. 572; *Stevens* v. *Benning* (1854), 1 K. & J. 168; and see *Woolley* v. *Broad* (1892), 9 R. P. C. 208 (patent case). Compare *Sims* v. *Marryatt* (1851),

SECT. 5. Licence to Print.

A licence to print and publish contained in an agreement between an author and his publisher—called a "publishing agreement," as distinct from an assignment of copyright—is of a personal character, and is not assignable without the author's consent (*k*). This principle applies whether the publishing firm consists of an individual, or partners, or a limited company (*l*).

Agreements between authors and publishers.

389. Where the agreement between an author and his publisher contains no express terms as to the copyright, if the consideration is payment to the author of royalties or a share of the profits, instead of a sum of money paid down, the inference is that the copyright is not assigned (*m*), but that a sole and exclusive licence is conferred on the publisher (*n*). So, where an author writes a book which is published on the terms that the author and publisher shall have an equal share in the profits, the copyright does not vest in the publisher, but belongs to the author (*o*).

Where the author, however, in consideration of a sum of money paid to him, agrees with the publisher that the latter shall have the sole right of printing, reprinting, and publishing a book without any limitation as to time, this would seem to constitute a perpetual licence, and might even be construed as an assignment of copyright (*p*).

Where under an agreement between an author and his publisher a licence is conferred on the publisher without limitation to any definite period, and where payment to the author is by royalties or by a share in the profits, such licence, although exclusive so long as it exists, is revocable; and the author can restrain the publication of any edition subsequent to the notice of revocation (*q*). The publisher is entitled, however, to sell any copies of an edition published under the agreement, or in respect of which he has incurred expense, relying upon the licence, before revocation (*r*)

A licence may, however, be for a term of years or for a definite period, in which case the publisher will be protected during the time specified in the agreement (*s*). But where the copyright

17 Q. B. 281, where the licence proved invalid owing to a previous assignment of the copyright.

(*k*) *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683.

(*l*) *Stevens* v. *Benning* (1854), 1 K. & J. 168; *Reade* v. *Bentley* (1857), 3 K. & J. 271; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886 (partners); *Griffith* v. *Tower Publishing Co., Ltd., and Moncrieff*, [1897] 1 Ch. 21 (limited company).

(*m*) *Hole* v. *Bradbury, supra, per* FRY, J., at p. 895. For forms of agreement between authors and publishers, see Encyclopædia of Forms, Vol. V., pp. 331 *et seq.*

(*n*) *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497, *per* JESSEL, M.R., at p. 501.

(*o*) *Lucas* v. *Moncrieff, supra.* The position of a publisher under a profit-sharing agreement is of a fiduciary character and the author is entitled to an account (*Barry* v. *Stevens* (1862), 31 Beav. 258). Such an agreement does not necessarily constitute a partnership (*Gardiner* v. *Childs* (1837), 8 C. & P. 345).

(*p*) *Stevens* v. *Benning, supra, per* Lord HATHERLEY, L.C., at p. 174; and see *Hole* v. *Bradbury, supra, per* FRY, J., at pp. 894, 895.

(*q*) *Reade* v. *Bentley, supra; Warne* v. *Routledge, supra; London Printing and Publishing Alliance, Ltd.* v. *Cox*, [1891] 3 Ch. 291, C. A. As to the meaning of "edition," see note (*f*), p. 161, *ante.*

(*r*) *Warne* v. *Routledge, supra; Howitt* v. *Hall* (1862), 6 L. T. 348; and see p. 160, *ante.*

(*s*) *Ibid.*

SECT. 5. Licence to Print.

proprietor gives a licence to print and publish without any such limitation, and subsequently assigns the copyright without notice of the licence, the assignee can restrain publication by the licensee, or sue him for infringement (*t*).

Compulsory licence.

390. In the event of the proprietor of copyright in any book refusing, after the author's death, to republish or to allow republication of the work, the Judicial Committee of the Privy Council have power to grant a licence to any applicant to publish the book upon such conditions as they think fit (*u*).

SECT. 6.—*Infringement.*

SUB-SECT. 1.—*In General.*

Unauthorised publication.

391. Publication of a literary composition, without the consent of the author or his assignee, is a violation and infringement of the author's right in an unpublished work (*a*). It is not an infringement of copyright, as none exists until authorised publication, and consequently the statutory remedies are not available. The remedy is an action founded upon the common law right (*b*). The author or his assignee can sue for an injunction (*c*) and recover damages (*d*). He is also entitled to delivery up of the copies printed and published without his consent (*e*).

The person who publishes the work is a wrong-doer, and it is immaterial whether he acted innocently or not (*f*). If copies of the work have been published and sold, the right of publication is infringed whether the profits are large or small (*g*).

Piracy.

392. It is an infringement of copyright to make copies (*h*) of any published book or literary composition, or any material part of it, in which there is subsisting copyright, by printing

(*t*) *London Printing and Publishing Alliance, Ltd.* v. *Cox*, [1891] 3 Ch. 291, C. A.

(*u*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 5.

(*a*) See p. 137, *ante*. As to the method of publication, see note (*h*), *infra*.

(*b*) See the cases cited in note (*m*), p. 137, *ante*.

(*c*) The court will grant an injunction when an illegal act is threatened, or when it has been done and its repetition appears to be intended (*Cooper* v. *Whittingham* (1880), 15 Ch. D. 501, *per* JESSEL, M.R., at p. 507; *Exchange Telegraph Co.* v. *Gregory & Co.*, [1896] 1 Q. B. 147, C. A.; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8); R. S. C., Ord. 50, r. 6); see generally title INJUNCTION.

(*d*) It is not necessary to prove special damage (*Exchange Telegraph Co.* v. *Gregory & Co.*, *supra*, *per* Lord ESHER, M.R., at p. 153).

(*e*) In *Caird* v. *Sime* (1887), 12 App. Cas. 326, the sheriff substitute had ordered all copies to be delivered up, and this order was affirmed by the House of Lords. See also *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815, *per* ERLE, J., at p. 867; *Mansell* v. *Valley Printing Co.*, [1908] 2 Ch. 441, C. A.

(*f*) *Mansell* v. *Valley Printing Co.*, *supra*.

(*g*) *Nicols* v. *Pitman* (1884), 26 Ch. D. 374, *per* KAY, J., at p. 379.

(*h*) In addition to infringement by reprinting in the ordinary way (*Routledge* v. *Low* (1868), L. R. 3 H. L. 100), copies made by (1) writing (*Boosey* v. *Whight*, [1900] 1 Ch. 122, C. A., *per* LINDLEY, M.R., at p. 123; *White* v. *Geroch* (1819), 2 B. & Ald. 298), (2) lithography (*Novello* v. *Sudlow* (1852), 12 C. B. 177), (3) typewriting (*Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73), (4) shorthand (*Nicols* v. *Pitman* (1884), 26 Ch. D. 374; *Pitman* v. *Hine* (1884), 1 T. L. R. 39), (5) photography (*Boosey* v. *Whight*, *supra*, *per* LINDLEY, M.R., at p. 123), or from (6) stereo blocks (*Marshall & Co.* v. *Bull* (1901), 85 L. T. 77, C. A., at p. 81),

SECT. 6. Infringement.

or otherwise (*i*), or to reproduce the same with mere colourable alterations (*k*).

Making copies for gratuitous distribution, and not for sale, is an infringement (*l*); and it is immaterial that the number of persons to whom they are distributed is limited (*m*).

Copying.

In order to constitute infringement of copyright some material portion of the author's work must be copied (*n*). The court will consider, however, not only the quantity, but also the value, of the matter which has been abstracted, for if a vital part of a book has been taken for use in another publication, although such part constitutes but a small proportion of the entire text, the sale of the author's original work may be prejudiced (*o*). If the defendant sets up a claim of right, the circumstance that he has copied only a small portion of the author's book becomes immaterial (*p*).

Compilation.

A compilation made from common sources of information is not infringed by making a similar compilation, provided that the latter is not copied from the former compilation, but is the result of independent labour (*q*).

Quotation.

Fair quotation is not an infringement of copyright (*r*).

Public recitation.

There is no exclusive right of recitation in English law; and the proprietor of copyright in a book cannot prevent any person from reading it in public (*s*).

It is not necessary for the plaintiff to prove that the infringement of copyright was wilful (*t*). Honest intention on the part of the infringer is no defence, and it will be presumed that he intended all the mischief that the infringement of the work effects (*u*).

are an infringement of copyright. Unauthorised publication by such means may be restrained, even in the case of unpublished works (*Nicols* v. *Pitman* (1884), 26 Ch. D. 374).

(*i*) See the definition of copyright, p. 140, *ante*.

(*k*) *Pike* v. *Nicholas* (1869), 5 Ch. App. 251.

(*l*) *Novello* v. *Sudlow* (1852), 12 C. B. 177; *Hotten* v. *Arthur* (1863), 1 Hem. & M. 603.

(*m*) *Ager* v. *Peninsular and Oriental Steam Navigation Co.* (1884), 26 Ch. D. 637, *per* KAY, L.J., at p. 641.

(*n*) *Chatterton* v. *Cave* (1878), 3 App. Cas. 483; *Pike* v. *Nicholas, supra; Bohn* v. *Bogue* (1846), 10 Jur. 420; *Jarrold* v. *Heywood* (1870), 18 W. R. 279; *Bailey* v. *Taylor* (1824), 3 L. J. (o. s.) (CH.) 66. As to the distinction between piracy and literary larceny, see *Dicks* v. *Yates* (1881), 18 Ch. D. 76, C. A., *per* JAMES, L.J., at p. 90.

(*o*) *Bramwell* v. *Halcomb* (1836), 3 My. & Cr. 737, *per* Lord COTTENHAM, C.J., at p. 738; *Saunders* v. *Smith* (1838), 3 My. & Cr. 711; *Scott* v. *Stanford* (1867), L. R. 3 Eq. 718; *Neale* v. *Harmer* (1897), 13 T. L. R. 209; *Kelly* v. *Hooper* (1841), 1 Y. & C. Ch. Cas. 197; *Cooper* v. *Stephens*, [1895] 1 Ch. 567.

(*p*) *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), 40 Ch. D. 500, *per* NORTH, J., at p. 507; *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425, C. A.

(*q*) See p. 145, *ante*.

(*r*) See pp. 146, 147, *ante;* and see *Bradbury* v. *Hotten* (1872), L. R. 8 Exch. 1, *per* BRAMWELL, B., at p. 7; *Harper & Brothers* v. *Biggs & Son, Times*, 27th June, 1907; *Bell* v. *Whitehead* (1839), 8 L. J. (CH.) 141.

(*s*) *Hanfstaengl* v. *Empire Palace*, [1894] 3 Ch. 109, C. A., *per* STIRLING, J., at p. 116.

(*t*) *Lee* v. *Simpson* (1847), 3 C. B. 871; *Campbell* v. *Scott* (1842), 11 Sim. 31; *Reade* v. *Lacy* (1861), 1 John. & H. 524.

(*u*) *Scott* v. *Stanford* (1867), L. R. 3 Eq. 718, *per* PAGE WOOD, V.-C., at

SECT. 6. Infringement.

If there were a well-known practice among journalists, authors, or publishers to copy from one another, this would not be any defence to an action for infringement of copyright (*w*). But in an action by an author for damages for injury to reputation, owing to unauthorised alterations in a serial story, evidence as to custom may be given for the purpose of showing, if possible, that no injury to reputation has been suffered, because the defendant has acted in accordance with a recognised practice (*x*).

Importation.

393. It is an infringement of copyright to introduce into this country for sale an unauthorised foreign reprint of a work in which copyright exists (*a*); but in this case knowledge is essential (*b*).

Passing off.

394. The publication or sale of any book which in title, binding and general appearance is a colourable imitation of the work of another author, and calculated to deceive the public in that respect, is not an infringement of copyright, but a common law fraud (*c*). In addition to the common law remedies, it may be restrained by injunction (*d*). The right to an injunction depends upon principles which apply generally to the sale of goods (*e*).

SUB-SECT. 2.—*Remedies for Infringement of Copyright.*

Remedies in general.

395. An action lies at common law for damages for violation of a right in respect of any infringement of copyright for which there may be no remedy expressly provided by statute (*f*). An injunction, account of profits, and delivery up of copies may also be granted by way of equitable relief for any infringement or any offence relating to copyright (*g*). The right to an account is ancillary to an injunction (*h*); but the plaintiff is not entitled to both an

p. 723; *Cary* v. *Kearsley* (1802), 4 Esp. 168; *Rock* v. *Lazarus* (1872), L. R. 15 Eq. 104.

(*w*) *Wyatt* v. *Barnard* (1814), 3 Ves. & B. 77; *Maxwell* v. *Somerton* (1874), 22 W. R. 313; *Walter* v. *Steinkopff*, [1892] 3 Ch. 489; *Hogg* v. *Kirby* (1803), 8 Ves. 215 (usage of booksellers).

(*x*) *Humphreys* v. *Thomson & Co.* (1908), *Times*, May 1, 1908.

(*a*) Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 15, 17; *Dicks* v. *Yates* (1881), 18 Ch. D. 76, C. A., *per* JAMES, L.J., at p. 90; and see further, p. 169, *post*.

(*b*) Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 15, 17.

(*c*) *Dicks* v. *Yates*, *supra*, *per* JAMES, L.J., at p. 90; see generally titles MISREPRESENTATION AND FRAUD; TRADE AND TRADE UNIONS.

(*d*) *Spottiswoode* v. *Clarke* (1846), 2 Ph. 154; *Chappell* v. *Davidson* (1855), 2 K. & J. 123; *Metzler* v. *Wood* (1878), 8 Ch. D. 606, C. A.; *Mack* v. *Petter* (1872), L. R. 14 Eq. 431; *Clement* v. *Maddick* (1859), 1 Giff. 98; *Chappell* v. *Sheard* (1855), 2 K. & J. 117.

(*e*) *Reddaway* v. *Banham*, [1896] A. C. 199; *Parsons* v. *Gillespie*, [1898] A. C. 239, P. C.; *Bradbury* v. *Beeton* (1869), 18 W. R. 33; *Cowen* v. *Hulton* (1882), 46 L. T. 897; and see *Kelly* v. *Byles* (1880), 13 Ch. D. 682, C. A.; *Barnard* v. *Pillow*, [1868] W. N. 94.

(*f*) *Novello* v. *Sudlow* (1852), 12 C. B. 177. "Offences" relating to copyright are dealt with under ss. 15, 17 of the Copyright Act, 1842 (5 & 6 Vict. c. 45). For infringements of copyright which are not within that category, see note (*n*), p. 169, *post*. No action will lie until registration; see p. 152, *ante*.

(*g*) *Hogg* v. *Kirby* (1803), 8 Ves. 215; *Pitt Pitts* v. *George & Co.*, [1896] 2 Ch. 866, C. A.; *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

(*h*) *Smith* v. *London and South Western Rail. Co.* (1854), 23 L. J. (CH.) 562; *Barry* v. *Stevens* (1862), 31 L. J. (CH.) 785.

SECT. 6. Infringement.

account and an inquiry as to damages (*i*). If two or more persons combine for the purpose of infringing copyright it constitutes a criminal act, and they may be indicted for conspiracy (*j*).

Injunction.

In order to obtain an injunction to restrain further infringement, it is not necessary to prove any actual damage (*k*), though the court must be satisfied that damage is likely to accrue (*l*).

An application for an injunction must be made promptly, and unnecessary delay may deprive a plaintiff of this equitable remedy (*m*). Where part of the work is clearly pirated, the court will grant an injunction forthwith, although the entire amount of pirated matter is unascertained (*n*).

Action for damages.

396. An action for damages (*o*) may be brought against any person in any part of the British dominions who, without the written consent of the copyright proprietor—

(1) Prints or causes to be printed (*p*) any copyright book for sale or importation (*q*); or

(2) Imports for sale or hire any such book, so unlawfully printed, from any British possession (*r*); or,

(*i*) *De Vitre* v. *Betts* (1873), L. R. 6 H. L. 319).

(*j*) *R.* v. *Willetts* (1906), 70 J. P. 127.

(*k*) *Smith* v. *Johnson* (1863), 4 Giff. 632; *Campbell* v. *Scott* (1842), 11 Sim. 31; *Tinsley* v. *Lacy* (1863), 1 Hem. & M. 747; *Kelly* v. *Hooper* (1839), 4 Jur. 21; *Sweet* v. *Maugham* (1840), 11 Sim. 51.

(*l*) *Borthwick* v. *Evening Post* (1888), 37 Ch. D. 449, C. A., where an injunction was refused, part of a newspaper's title having been appropriated without damage. Prior to the Judicature Act, 1873 (36 & 37 Vict. c. 66), an injunction was granted on the principle that an account of profits might only give partial and inadequate compensation, and because the sale of copies by the defendant was not only depriving the plaintiff of profits he might make by the sale of his book, but might also injure him to an extent which could not be ascertained by an inquiry as to damages (*Hogg* v. *Kirby* (1803), 8 Ves. 215, *per* Lord ELDON, L.C., at p. 223; *Mawman* v. *Tegg* (1826), 2 Russ. 385, 400).

(*m*) *Mawman* v. *Tegg*, *supra*, at p. 393; *Mexborough* (*Earl*) v. *Bower* (1843), 7 Beav. 127; *Lewis* v. *Chapman* (1840), 3 Beav. 133, 135; *Hogg* v. *Scott* (1874), L. R. 18 Eq. 444; *Pitman* v. *Hine* (1884), 1 T. L. R. 39; *Baily* v. *Taylor* (1829), 8 L. J. (o. s.) (CH.) 49; and see *Buxton* v. *James* (1851), 5 De G. & Sm. 80, where uncertainty as to the law was held sufficient excuse for delay in applying to the court.

(*n*) *Lewis* v. *Fullarton* (1839), 2 Beav. 6.

(*o*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 15. Damages may be assessed by the defendant accounting for every copy sold by him and paying the plaintiff the profit which the latter would have received from the sale of so many additional copies (*Pike* v. *Nicholas* (1869), 5 Ch. App. 251).

(*p*) *Kelly's Directories, Ltd.* v. *Gavin and Lloyds*, [1902] 1 Ch. 631, C. A.; *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73; *Lamb* v. *Evans*, [1895] W. N. 156.

(*q*) S. 16 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), contains provisions relating to procedure in an action for printing a copyright book "for sale, hire, or exportation"; but s. 15, which provides the action for damages in respect of unlawfully printing such book, omits the word "hire," and only mentions "for sale or exportation."

(*r*) The words of s. 15 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), are "from parts beyond the sea," and it is probable that this includes any part of the British dominions exclusive of the United Kingdom. For the definition of "British possession," see International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 11.

S. 15 is so worded as not to prohibit the importation of copies printed in

SECT. 6. Infringement.

(3) Knowing such book to have been so unlawfully printed or imported (*s*), sells, publishes, or exposes for sale or hire, or causes to be sold or exposed for sale or hire, or has in his possession for sale or hire, any such book.

The action must be brought in a court of record in that part of the British dominions in which the offence has been committed (*t*).

All copies unlawfully printed or imported without the written consent of the registered proprietor of the copyright are regarded in law as his property; and, after demand in writing, he can sue for their delivery, or for damages for their detention or conversion (*u*).

What may be claimed.

397. The plaintiff's claim may include damages for infringement of copyright and an injunction, delivery of the copies unlawfully printed or imported which are in the defendant's possession, and damages for conversion of such other copies as the defendant has disposed of (*w*).

Although no profits may have been made upon the sale of copies which have been sold by the defendant, the plaintiff may recover damages representing the actual proceeds of the sale (*x*).

The court may order delivery up of copies of the whole book although only portions of it are infringements, unless the latter can be conveniently separated from the other portion (*y*).

Notice of objections.

398. In any action for unlawfully printing a copyright book for sale, hire (*z*), or exportation, or importing the same, or for knowingly selling, publishing, or exposing the same for sale or hire, or for causing any such acts to be done, the defendant is required to give a written notice (*a*), with his defence, setting forth any

foreign countries (*Pitt Pitts* v. *George & Co.*, [1896] 2 Ch. 866, C. A.). But the International Copyright Act, 1844 (7 & 8 Vict. c. 12), s. 3, may be applicable to such importations. As to summary proceedings in respect of the importation of British copyright books printed abroad, see s. 17 of the Copyright Act, 1842 (5 & 6 Vict. c. 45); and see p. 169, *post*.

(*s*) The meaning of the expression "such book" and "so having been unlawfully printed" in s. 15 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), is explained in *Pitt Pitts* v. *George & Co.*, *supra*, *per* LINDLEY, L.J., at p. 872. As evidence of knowledge, notice should be given to the defendant before applying for an injunction (*Cooper* v. *Whittingham* (1880), 15 Ch. D. 501).

(*t*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 15. The action may be brought in a county court if the amount claimed is within its jurisdiction (*Harris* v. *Sheldon and Smart*, [1889] W. N. 92). As to the jurisdiction of a county court, see title COUNTY COURTS, pp. 428 *et seq.*, *post*.

(*u*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 23. As to the mode of assessing the damages, see *Pike* v. *Nicholas* (1869), 5 Ch. App. 255, n., *per* JAMES, V.-C., at p. 260, n.; reversed without reference to this point (1869) 5 Ch. App. 251.

(*w*) *Muddock* v. *Blackwood*, [1898] 1 Ch. 58; *Butterworth* v. *Kelly* (1888), 4 T. L. R. 430, where an injunction was granted, though only one pirated copy was sold. The court may order delivery up of copies, or parts of them, to be destroyed (*Hole* v. *Bradbury* (1879), 12 Ch. D. 886; *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73).

(*x*) *Muddock* v. *Blackwood*, *supra*.

(*y*) *Boosey & Co.* v. *Whight & Co.* (No. 2) (1899), 81 L. T. 265; *Mawman* v. *Tegg* (1826), 2 Russ. 385; *Stevens* v. *Wildy* (1850), 19 L. J. (CH.) 190; *Cary* v. *Longman* (1801), 1 East, 358; *Trusler* v. *Murray* (1789), 1 East, 363, n.; *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73.

(*z*) See note (*q*), p. 166, *ante*.

(*a*) For the form of notice, see Bullen and Leake, Precedents of Pleadings, 6th ed., pp. 826 *et seq.*

SECT. 6. Infringement.

objections he intends to rely upon at the trial. No objection can be allowed on behalf of the defendant at the trial unless it is stated in this notice (*b*). The notice of objections may be delivered with, or incorporated in, the defence (*c*). The notice is not essential in an action for infringement of copyright in the county court (*d*). Nor is it required in actions for detinue or trover asserting the right to pirated copies (*e*).

Contents of notice.

If the defence is that the plaintiff was not the author or first publisher of the book in which he claims copyright or is not the proprietor of the copyright therein, or that some other person was the author or first publisher or is the proprietor of the copyright, the notice must specify the name of any person alleged by the defendant to be the author or first publisher or proprietor of the copyright, together with the title of the book and time and place of first publication. In default of such specification evidence cannot be admitted on behalf of the defendant to show that the plaintiff was not the author or first publisher of the book or is not the proprietor of the copyright (*f*).

If a notice is given containing such specification evidence cannot be admitted on behalf of the defendant to show that any one other than the person specified in the notice was the author, first publisher, or is proprietor of the copyright; nor can any other book be given in evidence by the defendant than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in the notice (*g*).

Any defect in registration must be precisely stated in the notice of objections (*h*). The court may refuse leave to amend even though by the plaintiff's own evidence it appears that there is a defect in the entry in the register (*i*).

Interrogatories.

399. Where the defendant in an action for infringement sets up the defence that he has compiled the work from the original or common sources of information, the plaintiff is entitled to interrogate him to obtain full particulars as to the sources from which he alleges the work was compiled (*j*).

In order to estimate the sum to be paid into court with the

(*b*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 16.

(*c*) *Sweet* v. *Benning* (1855), 16 C. B. 459; *Cocks* v. *Purday* (1848), 5 C. B. 860.

(*d*) *Harris* v. *Sheldon and Smart*, [1889] W. N. 92. See, however, County Court Rules, Ord. 10, r. 18, which is subsequent to this case, and from its terms appears to require notice to be given. As to notice of statutory defence, see title COUNTY COURTS, p. 485, *post*.

(*e*) *Hole* v. *Bradbury* (1879), 12 Ch. D., 886, *per* FRY, J., at p. 902.

(*f*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 16.

(*g*) *Ibid.*; and see *Boosey* v. *Davidson* (1846), 4 Dow. & L. 147; *Hole* v. *Bradbury*, *supra*.

(*h*) *Collette* v. *Goode* (1878), 7 Ch. D. 842 (as to which case, however, see *Edevain* v. *Cohen* (1889), 41 Ch. D. 563, *per* NORTH, J., at p. 566); *Chappell* v. *Davidson* (1856), 18 C. B. 194; *Leader* v. *Purday* (1849), 7 C. B. 4; *Boosey* v. *Purday* (1846), 10 Jur. 1038; *Barnett* v. *Glossop* (1835), 1 Bing. (N. C.) 633; *Hayward Brothers* v. *Lely & Co.* (1887), 56 L. T. 418.

(*i*) *Collette* v. *Goode*, *supra*, where leave to amend was applied for under R. S. C., Ord. 28, r. 1, and was refused; see also *Hayward Brothers* v. *Lely & Co.*, *supra*.

(*j*) *Kelly* v. *Wyman* (1869), 17 W. R. 399.

defence, the defendant is entitled to interrogate the plaintiff as to the number of copies sold by the plaintiff within a limited time prior to and since the date when the infringement began (*k*).

Period within which action must be brought.

400. Any action in respect of an offence relating to copyright must be commenced within twelve months after the offence was committed (*l*). Such "offence" means the doing of something expressly prohibited under the provisions of the statute (*m*). Printing copies not for sale or exportation may be an infringement of copyright, but it is not an "offence" (*n*), and in such case an action may be brought after the expiration of the twelve months.

Summary proceedings.

401. Summary proceedings before magistrates may be taken against any person who, without the authority of the copyright proprietor, (1) imports or brings or causes to be imported or brought for sale or hire, or (2) knowingly sells, publishes, or exposes to sale, or lets to hire, or causes to be sold, published, or exposed to sale or let to hire, or (3) knowingly has in his possession for sale or hire, any copy printed abroad of a copyright book which has been first composed or written or printed and published in the United Kingdom (*o*).

Penalties.

The penalty upon conviction is £10 for each offence, and double the value of every such copy so imported, sold, published, exposed to sale, or let to hire, or in the defendant's possession; £5 goes to

(*k*) *Wright* v. *Goodlake* (1865), 13 L. T. 120.

(*l*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 26. The Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 2, repeals this section of the Copyright Act, 1842 (5 & 6 Vict. c. 45), so far as it relates to an offence committed by a public official or person acting in pursuance of a statutory or public duty and imposes the period of six months; see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

(*m*) *Hogg* v. *Scott* (1874), L. R. 18 Eq. 444, *per* HALL, V.-C., at p. 451. The sections of the Act expressly prohibiting offences relating to copyright are ss. 15 and 17. In *Weldon* v. *Dicks* (1878), 10 Ch. D. 247, at p. 262, MALINS, V.-C., expressed the opinion that the limitation of twelve months only applies to summary proceedings or "an action for penalties." But the section (s. 26) specifies "actions, suits, bills, indictments, or informations." Actions in the Chancery Division are now substituted for "suits" in Chancery, which were commenced by "bills" and "informations" and which are now abolished (R. S. C., Ord. 1, r. 1); and "actions" cannot refer to the proceedings before magistrates under s. 17.

(*n*) S. 15 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), expressly prohibits printing "for sale or exportation" any book in which there is subsisting copyright, and provides a remedy by action. But an infringement of copyright may also be committed by multiplying copies otherwise than by printing, or by printing copies for gratuitous distribution, and the remedy is by action at common law for infringement of a right (*Novello* v. *Sudlow* (1852), 12 C. B. 177); see p. 165, *ante*.

(*o*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 17; see *Imperial Book Co.* v. *A. and C. Black and Clarke Co.* (1905), 21 T. L. R. 540, P. C., where the Supreme Court of Canada held that s. 152 of the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), requiring notice of copyright in a book to be given to the Commissioners of Customs, was not in force in Canada, s. 17 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), being applicable, and the Privy Council refused leave to appeal. As to knowledge with regard to offences (2) and (3), see *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501; *Colburn* v. *Simms* (1843), 2 Hare, 543, 557; *Leader* v. *Strange* (1849), 2 Car. & Kir. 1010.

SECT. 6. Infringement.

the officer of customs or excise, and the remainder of the penalty goes to the proprietor of the copyright (*p*).

All such copies are directed to be seized by the officer of customs or excise and to be destroyed by him (*q*).

SUB-SECT. 3.—*Additional Remedies relating to Pirated Copies of Musical Compositions.*

Summary procedure.

402. It is an offence punishable on summary conviction for any person to print, reproduce, sell, expose, offer, or have in his possession for sale, any pirated copies, or plates (*r*) for printing or reproducing such copies, of any musical composition (*s*), in which there is subsisting copyright, and which has been registered at Stationers' Hall (*t*).

The expression "pirated copies" means any copies of a musical composition printed or reproduced without the written consent of the proprietor of the copyright (*a*).

(*p*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 17; and see *Ex parte Beal* (1868), L. R. 3 Q. B. 387, at p. 395 (artistic copyright).

(*q*) *Ibid.* The direction as to forfeiture and seizure extends to all copies of unauthorised foreign reprints the importation of which is absolutely prohibited (International Copyright Act, 1852 (15 & 16 Vict. c. 12), s. 9. For this purpose a written notice by the registered proprietor of the copyright should be given to the Commissioners of Customs, who keep a list of books as to which notice has been given (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 42—45; Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 1). For the forms of notice, see Encyclopædia of Forms, Vol. V., p. 323.

(*r*) As to the meaning of "plates," see Musical Copyright Act, 1906 (6 Edw. 7, c. 36), s. 3; and see the cases cited in note (*x*), p. 143, *ante*.

(*s*) A musical composition is a "book" within the Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2, and the law relating to literary copyright is applicable to such work; but special remedies by summary proceedings are provided under the Musical Copyright Act, 1906 (6 Edw. 7, c. 36), for infringement of the copyright in musical compositions.

(*t*) Musical Copyright Act, 1906 (6 Edw. 7, c. 36), s. 1 (1). As to "registration," see *ibid.*, s. 3. Although registration under the International Copyright Act, 1844 (7 & 8 Vict. c. 12), of works first produced abroad was abolished by the International Copyright Act, 1886 (49 & 50 Vict. c. 33), and Order in Council thereunder (*Hanfstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q. B. 1, *per* CHARLES, J., at p. 10), it is provided by the Musical Copyright Act, 1906 (6 Edw. 7, c. 36), s. 1 (1), that such registration of musical compositions may be effected, notwithstanding anything in the International Copyright Act, 1886 (49 & 50 Vict. c. 33).

Summary proceedings in respect of pirated copies are also provided for under the Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15). For the difficulties involved therein, see *Ex parte Francis*, [1903] 1 K. B. 275; *Ex parte Francis* (No. 2) (1903), 88 L. T. 806. These difficulties are removed by the Musical Copyright Act, 1906 (6 Edw. 7, c. 36); and consequently the earlier Act is not now used.

(*a*) Musical Copyright Act, 1906 (6 Edw. 7, c. 36), s. 3; and see cases cited p. 163, *ante*. A perforated music roll is not a copy of a musical composition (*Boosey* v. *Whight*, [1900] 1 Ch. 122, C. A.), or within the meaning of a "pirated musical work" in the Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15) (*Mabe* v. *Connor*, [1909] 1 K. B. 515). It is expressly provided by the Musical Copyright Act, 1906 (6 Edw. 7, c. 36), that "pirated copies" and "plates" referred to therein do not include perforated music rolls used for playing mechanical instruments, or records used for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records are made.

SECT. 6. Infringement.

It is a sufficient defence to a prosecution for such offences (*b*) if the defendant proves that he acted innocently (*c*).

A defendant who is convicted is not liable to any penalty for his first offence, if he proves that a name and address purporting to be that of the printer or publisher was printed upon the title-page of his pirated copies, unless it is proved that he knew the copies were "pirated" (*d*).

Penalties.

The penalty for the first offence is a fine not exceeding £5, and in respect of any subsequent offence imprisonment with or without hard labour for a term not exceeding two months, or a fine not exceeding £10 (*e*).

There is an appeal from a conviction to quarter sessions (*f*).

Arrest without warrant.

Any person who sells, exposes, offers, or has in his possession for sale, in a street or public place, pirated copies of a musical composition in respect of which due notice has been given to the police, is liable to be arrested by a constable without warrant (*g*).

Such notice, specifying the musical composition, may be contained in a general authority in writing, addressed to the chief officer of police and signed by the apparent owner of the copyright, or his agent thereto authorised in writing, requesting the arrest, at the risk of such owner, of all persons found committing such offences as above mentioned in respect of the musical compositions specified in the notice (*g*).

A copy of every such notice may be inspected at all reasonable hours by any person without payment of any fee, and any person may take copies of or extracts from the same (*h*).

Search warrant.

Where there is reasonable ground for suspecting that any such offence relating to pirated copies is being committed upon any premises, a court of summary jurisdiction may grant a search warrant authorising the police to enter the premises, by force if necessary, and to seize any copies believed to be pirated, or plates suspected of being used for the purpose of producing pirated copies (*i*).

All copies and plates so seized must be brought before the court, and if the copies are proved to be pirated or the plates intended to be used for the printing or reproduction of pirated copies, they may be forfeited and destroyed, or dealt with in any way the court thinks fit (*k*).

SECT. 7.—*Protection of certain Interests acquired prior to* 1887.

Interests acquired prior to 1887

403. Prior to December 6, 1887 (*l*), the author of any literary or artistic work first published outside the British dominions was

(*b*) That is, under the Musical Copyright Act, 1906 (6 Edw. 7, c. 36).
(*c*) *Ibid.*, s. 1 (1).
(*d*) *Ibid.*
(*e*) *Ibid.*
(*f*) *Ibid.*, s. 1 (4).
(*g*) *Ibid.*, s. 1 (2).
(*h*) *Ibid.*, s. 1 (3).
(*i*) *Ibid.*, s. 2 (1).
(*k*) *Ibid.*, s. 2 (2).
(*l*) The date on which the Berne Convention came into operation throughout the British dominions (Order in Council, November 28, 1887, s. 9).

SECT. 7. Protection of certain Interests acquired prior to 1887.

not entitled to any copyright or performing right therein unless he complied with certain formalities as to registration and delivery of copies at Stationers' Hall within a certain period from the date of first publication (*m*).

In the event of such formalities having been complied with, the author of any literary or artistic work first published in certain foreign countries (*n*), specified in Orders in Council, became entitled to British copyright or performing right in such works respectively (*o*).

All such Orders in Council were revoked in 1887 (*p*), and the formalities required for protection thereunder became unnecessary (*a*). But where any person had before that date lawfully produced any such work in the United Kingdom, his rights or interests arising from or in connection with such production, which were subsisting and valuable at that date, are protected (*b*).

Dramatic pieces.

404. In the case of dramatic pieces first published in the foreign countries referred to, even though the formalities requisite for securing British rights were complied with, fair imitations or adaptations to the English stage were not regarded as infringements prior to 1887 (*c*), and the English author or adapter might acquire rights in such adaptations, and these rights are in like manner protected.

Any person entitled to copyright or performing right in any such literary or artistic works prior to and subsisting on the 6th December, 1887, is still entitled to the same for the statutory period from the date of first publication (*d*).

SECT. 8.—*Crown Copyright.*

Rights of the Crown.

405. The Crown, or the assignee of the Crown, has the same capacity of acquiring copyright as a private individual (*e*). If a servant of the Crown, in the course of his duty for which he is paid, composes any document, or if a person is specially employed and paid by the Crown for the purpose of composing any document, the

(*m*) International Copyright Act, 1844 (7 & 8 Vict. c. 12), s. 19.

(*n*) For the list, see Order in Council, November 28, 1887, Sched. II.

(*o*) International Copyright Act, 1844 (7 & 8 Vict. c. 12), and Orders in Council made thereunder and dating from August 27, 1846, to September 24, 1886; International Copyright Act, 1852 (15 & 16 Vict. c. 12), ss. 9, 10.

(*p*) Order in Council, November 28, 1887, Sched. II.

(*a*) *Hanfstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q. B. 1.

(*b*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 6; *Moul* v. *Groenings*, [1891] 2 Q. B. 443, C. A.; *Schauer* v. *Field* (*J. C. and J.*), *Ltd.*, [1893] 1 Ch. 35.

(*c*) International Copyright Act, 1852 (15 & 16 Vict. c. 12), s. 6. This section is no longer applicable to dramatic pieces which have been or may be first published after December 6, 1887, in any one of the foreign countries of the union constituted under the Berne Convention, 1886 (Order in Council, November 28, 1887, s. 6; see note (*l*), p. 171, *ante*).

(*d*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 12 (b); Order in Council November 28, 1887, s. 7; *Moul* v. *Groenings*, *supra*; *Hanfstaengl Art Publishing Co.* v. *Holloway*, *supra*. A special interest in a trade mark is entitled to protection under these provisions (*Schauer* v. *Field* (*J. C. and J.*), *Ltd.*, *supra*).

(*e*) For the position of the Crown generally as regards the acquisition of property, see title CONSTITUTIONAL LAW, Vol. VI., p. 496.

copyright in the literary composition belongs to the Crown, as it would in the case of a private employer (*f*).

Printing of the Bible.

406. It is the prerogative of the Crown (*g*) to grant by letters patent, from time to time, the exclusive right of printing the text of the Authorised Version of the Bible and of the Book of Common Prayer (*g*). This right has been granted to the King's Printer and the universities of Oxford and Cambridge (*h*).

(*f*) See Treasury Minute, August 31st, 1887; and see p. 158, *ante*. From the terms of the Treasury Minute it appears that the Crown does not enforce its copyright in the case of all Government publications. Subject to the exceptions mentioned below, any person may reproduce the following publications:—

(1) Reports of select committees of the two Houses of Parliament or of royal commissions;

(2) Papers required by statute to be laid before Parliament, *e.g.*, Orders in Council, rules made by Government departments, accounts, reports of Government inspectors;

(3) Papers laid before Parliament by command, *e.g.*, treaties, diplomatic correspondence, reports from consuls and secretaries of legation, reports of inquiries into explosions or accidents, and other special reports made to Government departments;

(4) Acts of Parliament;

(5) Official books, *e.g.*, King's Regulations for the Army and Navy.

The exceptions are as follows:—

(1) Acts of Parliament must not purport to be published by authority, except when published by the Government;

(2) Works of a literary or *quasi*-literary character, which accidentally come within the above-mentioned classes, *e.g.*, reports of the Historical Manuscripts Commission;

(3) A report made for public purposes to a Government department by a private person of eminent scientific knowledge, who is unwilling to allow it to be reproduced for the personal benefit of an individual publisher.

In the case of Government publications issued after August 31st, 1887, where it is desired by the Government to enforce their copyright a notice of reservation is prefixed to the work.

The Crown reserves the exclusive right of publishing charts and ordnance maps (*ibid.*). The publication of the "Nautical Almanac" for the purpose of finding the longitude of the sea, in the interests of navigation, is under the control of the Lords of the Admiralty (Nautical Almanack Act, 1828 (9 Geo. 4, c. 66), s. 2).

(*g*) It has been said that the Crown enjoys this right because the translation known as the Authorised Version was made, and the Book of Common Prayer was compiled, at the King's charge (*Millar* v. *Taylor* (1769), 4 Burr. 2303; *Hills* v. *Oxford University* (1684), 1 Vern. 275). This reason has been doubted (*Manners* v. *Blair* (1828), 3 Bli. (N. S.) 391, H. L., *per* Lord LYNDHURST, L.C., at pp. 402 *et seq.*). Other reasons suggested by judges have been—(1) the King is vested with the prerogative as supreme head of the Church; (2) it is the duty of the State to superintend the publication of all Acts of State and other works upon which the established doctrines of religion are founded, and the duty carries with it the corresponding prerogative (*Manners* v. *Blair*, *supra*, at p. 402; *Eyre* v. *Carnan* (1781), 6 Bac. Abr. 509, tit. Prerogative, F, 5). It has been suggested that the grant of the letters patent is a licence merely to print such books which shall be used for a particular purpose (*Grierson* v. *Jackson* (1794), Ridg. L. & S. 304, *per* Lord LOUGHBOROUGH, L.C., at pp. 306, 310; and see *Hills* v. *Oxford University*, *supra*; *Oxford and Cambridge Universities* v. *Richardson* (1802), 6 Ves. 689). As to the exercise of the royal prerogative with regard to printing, see title CONSTITUTIONAL LAW, Vol. VI., p. 496.

(*h*) *Millar* v. *Taylor*, *supra*; and see *Basket* v. *Cambridge University* (1758), 1 Wm. Bl. 105; *Re Red Letter New Testament* (*Authorised Version*) (1900), 17 T. L. R. 1.

SECT. 8. Crown Copyright.

The Hebrew Bible, the Greek Testament, and the Septuagint are within the public domain; and any person is entitled to print and publish such works without restriction (*i*).

SECT. 9.—*University Copyright.*

Exclusive right.

407. The two universities of Oxford and Cambridge, the four universities of Scotland, each college and house of learning at the universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester, are entitled to the exclusive right of printing all such books as have been or may be bequeathed or given to them, or in trust for them, by the authors thereof, or by their representatives. This right is perpetual unless it was given or bequeathed for a limited period (*k*).

Such exclusive right, however, only endures so long as the books or copies belonging to such universities or colleges are printed exclusively at their own printing presses, within their universities or colleges respectively, and for their sole benefit and advantage. If they delegate, grant, lease, or sell their copyright or the exclusive right of printing, or any part thereof, or grant a licence to print any such works, the exclusive right of printing ceases; but any such dealing with their copyright will be valid in the same way as if made by any author (*l*).

Penalties may be recovered in respect of any infringement of this right provided that the title of the book has been registered at Stationers' Hall prior to the 24th June, 1775, or within two months after the bequest (*m*). The exclusive right in perpetuity belonging to such universities and colleges is expressly preserved by the Copyright Act, 1842 (*n*).

SECT. 10.—*Delivery of Copies to Libraries.*

Delivery to British Museum.

408. One copy of every book published in the United Kingdom (*o*) must be delivered at the British Museum on behalf of the publisher within one month of publication in the metropolis, or within three months if published in any other part of the United Kingdom (*p*). The copy must be complete, with all maps, prints, and engravings, finished and coloured in the best manner, bound, stitched, or sewn together, upon the best paper of the particular issue (*p*). The

(*i*) *Millar* v. *Taylor* (1769), 4 Burr. 2303.

(*k*) Copyright Act, 1775 (15 Geo. 3, c. 53), extended to Trinity College, Dublin, by stat. 41 Geo. 3, c. 107 (1801), s. 3. In 1878 the Copyright Commissioners reported that the result of their inquiries showed that the University of Oxford possessed six copyrights, and the University of Cambridge had none.

(*l*) Copyright Act, 1775 (15 Geo. 3, c. 53), s. 3.

(*m*) *Ibid.*

(*n*) 5 & 6 Vict. c. 45, s. 27. By *ibid.*, s. 1, the whole of the statute (41 Geo. 3, c. 107) extending the privilege to Trinity College, Dublin, is repealed; but s. 3 of the repealed Act is apparently kept alive by the provisions of the Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 27.

(*o*) Delivery of copies at the British Museum of books published in any British possession is not required (International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8 (1) (b)).

(*p*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 6.

SECT. 10. Delivery of Copies to Libraries.

copy must be delivered to one of the officers of the British Museum, or a person authorised by the trustees, between 10 a.m. and 4 p.m. on any day, except Sunday, Ash Wednesday, Good Friday, and Christmas Day (*q*).

One copy of every subsequent edition of a book, with any additions or alterations, whether in the letterpress or in the maps, prints, or engravings, must be delivered in a similar manner (*r*).

Other libraries.

The publisher is also required to deliver a copy of every book so published to the following libraries, namely, the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the library of Trinity College at Dublin, if he receives a demand in writing within twelve months of publication from the officer of the Stationers' Company, or the proprietors or managers of the respective libraries, or their agents (*s*). These copies must be upon similar paper and in the same condition as the largest number of copies that are printed (*t*).

Failure to deliver.

The failure to make delivery of the copy to the British Museum, or copies to the other libraries after demand in writing, does not affect the author's copyright, but renders the publisher liable to a penalty not exceeding £5, which may be recovered summarily before the magistrates, or by an action in which the plaintiff is entitled to costs as between solicitor and client (*a*).

Part II.—Performing Right in Dramatic Pieces and Musical Compositions.

SECT. 1.—*In General.*

SUB-SECT. 1.—*Unpublished Works.*

Performing right.

409. The performing right is the sole and exclusive right of representing, or causing to be represented, a dramatic piece or musical composition by performance in public (*b*). It extends throughout the British dominions (*b*).

(*q*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 7.
(*r*) *Ibid.*, s. 6.
(*s*) *Ibid.*, s. 8.
(*t*) *Ibid.*
(*a*) *Ibid.*, s. 10. The limitation of actions, as to which, see p. 169, *ante*, does not apply to failure to make delivery (*ibid.*, s. 26).
(*b*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1. The words in the section "at any place of dramatic entertainment" mean any place which, for the time being, is used for the performance of such works and to which the public are admitted, with or without payment (*Duck* v. *Bates* (1884), 13 Q. B. D. 843, C. A., *per* BRETT, M.R., at p. 848; *Russell* v. *Smith* (1848), 12 Q. B. 217; *Wall* v. *Taylor* (1883), 11 Q. B. D. 102, C. A., at p. 108; *Lee* v. *Simpson* (1847), 3 C. B. 871, *per* WILDE, C.J., at p. 883).

SECT. 1. In General.

Rights before publication.

The author (*c*), or his assignee (*d*), of any dramatic piece (*e*) or musical composition which is unpublished, is entitled to the performing right therein, as soon as the work is composed in manuscript (*f*).

The author must be a British subject or resident within the British dominions, or belong to a country which has a copyright treaty or convention with Great Britain (*g*).

Joint authors.

410. A person who employs an author to write a dramatic piece or musical composition, even though he suggests the subject and makes alterations and additions, is not a joint author; nor, in the absence of an agreement in writing amounting to an assignment, is he entitled to the performing right (*h*).

But where a dramatic piece is entirely designed and prepared for representation on the stage by a person who employs and pays others to assist by supplying various parts of the entire entertainment, such persons have no separate performing right therein, and cannot restrain the employer from representing the work (*i*).

To constitute joint authorship, there must be a common design and co-operation in the work of carrying it out, though one may do a larger share of it than the other (*k*). Where an author of a dramatic piece submits it to a manager, and alterations and additions are made, even with the consent of the author, for the purpose of rendering it more attractive or better adapted for stage representation, the person making such alterations or additions is not a joint author of the dramatic piece (*l*).

Where the performing right is vested in two or more part owners, they are in the position of tenants in common, and not joint tenants (*m*).

Setting of old melodies.

411. The composer of a prelude and accompaniment to an old melody, in which there is no subsisting copyright, is the author of the entire musical composition, and may be registered as the proprietor of the copyright (*n*).

(*c*) See p. 137, *ante*.

(*d*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1; and see the definition of "assigns" in the Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2, which is included in "the provisions hereinbefore enacted," and is therefore by s. 20 applicable to the performing right in dramatic pieces and musical compositions.

(*e*) For the meaning of "dramatic piece," see p. 183, *post*.

(*f*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1. The provisions of this Act are made applicable to musical compositions by the Copyright Act, 1842 (4 & 5 Vict. c. 45), s. 20; and see *Reichardt* v. *Sapte*, [1893] 2 Q. B. 308.

(*g*) Performing right in dramatic works is protected under the Berne Convention, 1886, art. 4; see note (*i*), p. 141, *ante*.

(*h*) *Levy* v. *Rutley* (1871), L. R. 6 C. P. 523; *Shepherd* v. *Conquest* (1856), 17 C. B. 427; *Eaton* v. *Lake* (1888), 20 Q. B. D. 378, C. A.; and see *Tate* v. *Fullbrook*, [1908] 1 K. B. 821.

(*i*) *Hatton* v. *Kean* (1859), 8 W. R. 7; and see *Wallerstein* v. *Herbert* (1867), 16 L. T. 453.

(*k*) *Levy* v. *Rutley*, *supra*.

(*l*) *Ibid*.

(*m*) See note (*t*), p. 160, *ante*.

(*n*) *Lover* v. *Davidson* (1856), 1 C. B. (N. S.) 182; see also *Leader* v. *Purday* (1849), 7 C. B. 4; *Chappell* v. *Sheard* (1855), 2 K. & J. 117.

SUB-SECT. 2.—*Published Works.* SECT. 1. In General.

412. A dramatic piece or musical composition may be published by being issued to the public in printed form (*o*), or by public performance (*p*). Publication.

For the purpose of determining the date of publication from which the statutory period commences, the first public performance of a dramatic piece or musical composition is equivalent to the first publication of a book (*q*).

Publication of a dramatic piece in printed form does not deprive the author of his performing right (*r*).

413. The performing right in any musical composition first published after the 10th August, 1882, is lost, unless the proprietor of the copyright therein, or his assignee, prints, or causes to be printed, a notice reserving the performing right upon the title-page of every published copy of the work (*s*). Notice of reservation of performing right.

The notice need not be in any particular form provided it is to the effect that the performing right is reserved (*t*). The notice may reserve the right generally, or the reservation may be limited

(*o*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1; see also pp. 142, 143, *ante*.

(*p*) The first performance of a dramatic piece is equivalent to the first publication of a book (Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20; *Boucicault* v. *Delafield* (1863), 1 Hem. & M. 597; *Boucicault* v. *Chatterton* (1876), 5 Ch. D. 267, C. A.). In the foreign countries of the union constituted by the Berne Convention, 1886, a dramatic piece is not published by performance, but only by being issued in printed form (Declaration of Paris, 1896, to which all the countries of the union, except Great Britain, were signatories).

(*q*) It has been suggested that the statutory periods of copyright and performing right in a dramatic piece may commence and expire at different times (*Chappell* v. *Boosey* (1882), 21 Ch. D. 232, *per* NORTH, J., at p. 239). But it is submitted that this view is incorrect, on the construction of s. 20 of the Copyright Act, 1842 (5 & 6 Vict. c. 45).

Under the provisions of the Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1, the performing right, for the statutory period, commenced from the date of publication in printed form. S. 20 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), extended the term of the performing right, and provides that it shall endure for the same period as the copyright in books. It would seem to follow that the statutory period of performing right as well as of copyright, in a dramatic piece first published as a book, commences from the date of such publication.

Moreover, s. 20 provides that the first public performance of a dramatic piece shall be deemed in the construction of the Act equivalent to the first publication of any book, and then it provides for registration of the work in manuscript with reference to the first public performance. From this it would seem to follow that the intention of the Act is that the two periods should run concurrently.

(*r*) Prior to 1833 the publication of a dramatic piece in printed form deprived the author of his performing right, or his common law right, if any, to restrain publication by performance (*Murray* v. *Elliston* (1822), 5 B. & Ald. 657). The Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), was passed to remedy this, and secured to the author the performing right in a dramatic piece which had been printed and published (*Chappell* v. *Boosey*, *supra*, *per* NORTH, J., at p. 241).

(*s*) Copyright (Musical Compositions) Act, 1882 (45 & 46 Vict. c. 40), s. 1; *Fuller* v. *Blackpool Winter Gardens and Pavilion Co.*, [1895] 2 Q. B. 429, C. A.; see also Berne Convention, 1886, art. 9.

(*t*) Copyright (Musical Compositions) Act, 1882 (45 & 46 Vict. c. 40), s. 1.

SECT. 1. In General.

to the use of the musical composition in some particular way. Thus, the right to sing a song at music halls or in pantomimes may be reserved, leaving it open to anyone to sing it elsewhere (*a*). Although a musical composition, if it is a song, may be also a dramatic piece, yet the notice of reservation is essential to the performing right (*b*).

The notice reserving the performing right must be in English, if the musical composition is first published in the British dominions; but if the first publication is in one of the foreign countries of the union constituted by the Berne Convention, 1886, the foreign notice is sufficient, if it is duly printed upon every copy, whether published in the British dominions or elsewhere (*c*).

Separation of copyright and performing right.

414. If the copyright and performing right are vested, before publication of any copy thereof, in different owners, it is necessary for the owner of the performing right, in order to retain the same, to give to the owner of the copyright a notice in writing, before publication, requiring him to print upon every published copy of the work the notice reserving the performing right. And if the copyright and performing right are vested, after publication, in different owners, and such notice has been duly printed on all copies published previously to such vesting, the owner of the performing right must give the notice in writing to the copyright proprietor before the publication of any further copies (*d*).

If the owner of the copyright, after receiving such notice, neglects or fails to print the notice reserving the performing right legibly and conspicuously upon every copy of the work published by him or with his authority, he is liable to pay a sum of £20 to the owner of the performing right (*e*).

Authors entitled to protection.

415. The author, or his assignee, of a dramatic piece or musical composition first published in (1) the United Kingdom (*f*), or (2) any British possession (*g*), or (3) any one of the foreign countries of the union constituted under the Berne Convention, 1886 (*h*), is entitled to the performing right, provided he complies with the necessary formalities and conditions. After publication it is limited to the statutory period (*i*).

There are no formalities or conditions to be complied with in respect of a dramatic piece first published in the United Kingdom. In the case of a musical composition, the only formality or condition is that a reservation of the performing right must be printed upon every published copy of the work (*k*). Dramatic pieces or

(*a*) *Fuller* v. *Blackpool Winter Gardens and Pavilion Co.*, [1895] 2 Q. B. 429, C. A.
(*b*) *Ibid.*
(*c*) *Sarpy* v. *Holland*, [1908] 2 Ch. 198, C. A.
(*d*) Copyright (Musical Compositions) Act, 1882 (45 & 46 Vict. c. 40), s. 2.
(*e*) *Ibid.*, s. 3.
(*f*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1.
(*g*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8.
(*h*) See p. 141, *ante*. Performing right is protected under the Berne Convention, 1886, art. 9.
(*i*) For the statutory period, see p. 179, *post*.
(*k*) See p. 177, *ante*.

musical compositions may be registered at Stationers' Hall (*l*), but this is not a condition precedent either to the acquisition of the performing right or to the right of action for its infringement (*m*).

In the case of a dramatic piece or musical composition first published in any British possession (*a*), the local formalities prescribed by the law of such possession must be complied with; and similar requirements must be observed in respect of such works first published in any one of the countries of the union constituted by the Berne Convention, 1886 (*b*).

Period of protection.

416. The statutory period of performing right in a dramatic piece or musical composition, first published in the British dominions, is the same as the term of copyright in books, namely, the author's life and seven years after his death, or forty-two years from the date of first publication, whichever period is the longer (*c*).

In the case of any such work first published in one of the foreign countries of the union constituted under the Berne Convention, 1886, the period of British performing right is the term of protection allowed by the law of the country where the work is first published. If publication is made simultaneously in two or more countries of the union constituted under the Berne Convention, 1886, the period of British performing right will be the shortest term allowed in those countries in which there is simultaneous publication (*d*).

SECT. 2.—*Registration.*

Registration.

417. If a dramatic piece or musical composition is first performed in the United Kingdom, or in any British possession where local registration is not provided for (*e*), the proprietor of the performing right may, if he thinks fit, register it at Stationers' Hall, even though the work is in manuscript. But this is not a condition precedent either to the acquisition of the performing right or to the right of action for its infringement (*f*). A certified

(*l*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20. As to the advantage of registration, see p. 180, *post*.

(*m*) *Ibid.*, s. 24 (proviso). As to musical compositions, see *Edwardes* v. *Cotton* (1902), 19 T. L. R. 34; and see *Russell* v. *Smith* (1848), 12 Q. B. 217, where, however, the musical composition was held to be also a dramatic piece; *Marsh* v. *Conquest* (1864), 17 C. B. (N. S.) 418.

(*a*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), ss. 8, 11. In the Transvaal and under the Copyright Act, 1905 (Commonwealth of Australia (No. 25 of 1905)), a notice of reservation of performing right must be printed on every copy. In Natal registration of playright is obligatory (Playrights Act, 1898 (Natal) (No. 44 of 1898)).

(*b*) In all such countries the notice reserving performing right in a musical composition is required (Berne Convention, 1886, art. 9).

(*c*) For the statutory period of copyright in books, see p. 140, *ante*.

(*d*) See p. 140, *ante*. The law relating to (1) forum, (2) remedies for infringement of foreign copyright, and (3) evidence of foreign copyright, as stated at p. 142, *ante*, is applicable to the performing right in dramatic pieces and musical compositions.

(*e*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), ss. 8, 11.

(*f*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 24; *Hardacre* v. *Armstrong* (1905), 21 T. L. R. 189; and see note (*m*), *supra*. As to the registration

SECT. 2. Registration.

copy of the entry is *primâ facie* proof of the proprietorship of the performing right in all courts and in all summary proceedings, but it may be rebutted by other evidence (*g*).

A dramatic piece or musical composition cannot be registered at Stationers' Hall until it has been published in printed form (*h*) or by public performance.

Particulars.

After public performance the form of entry requires the following particulars: (1) title; (2) name and place of abode of the author or composer; (3) name and place of abode of the proprietor of the performing right (*i*); (4) time and place of first performance (*j*).

All the provisions with respect to books relating to the keeping of the register (*k*), for inspecting the same, for searches and the delivery of certified copies and their reception in evidence (*l*), the making of false entries, and the production in evidence of papers falsely purporting to be copies of entries (*m*), the application by any person aggrieved to expunge or vary any entry in the register (*n*), are applicable to the performing right in dramatic pieces and musical compositions (*o*).

Colonial registration.

418. If a dramatic piece or musical composition is first produced in a British possession where local registration is provided for, and an entry is made as prescribed by the law of that possession, a duly certified extract from the registry is admissible in evidence in all courts throughout the British dominions (*p*).

Foreign registration.

419. In the case of a dramatic piece or musical composition first performed in any one of the foreign countries of the union constituted under the Berne Convention, 1886, the formalities and conditions, if any, with regard to registration, prescribed by the law of that country, must be complied with, in order to entitle the

of dramatic pieces and musical compositions published in printed form, see p. 152, *ante*. In the case of a musical composition so published, the copyright owner is entitled to additional remedies by summary proceedings for piracy if he is registered (Musical Copyright Act, 1906 (6 Edw. 7, c. 36); see p. 170, *ante*). For the official form requiring entry on the register, see Encyclopædia of Forms, Vol. V., p. 320.

(*g*) Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 11, 20.

(*h*) For the form of entry after publication in printed form, see pp. 152, 153, *ante*.

(*i*) This may be the proprietor's place of business (*Nottage* v. *Jackson*, reported on this point (1883), 49 L. T. 339, *per* FIELD, J., at p. 340), or even an address where a letter will find him (*Lover* v. *Davidson* (1856), 1 C. B. (N. S.) 182, 186).

(*j*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20 (proviso). An incorrect entry as to time and place of first performance does not affect the performing right, but merely disables the proprietor from using a certified copy as *primâ facie* evidence of his right, which he is entitled to prove by other evidence (*Hardacre* v. *Armstrong* (1905), 21 T. L. R. 189).

(*k*) See p. 152, *ante*.

(*l*) See p. 155, *ante*.

(*m*) See p. 157, *ante*.

(*n*) See p. 156, *ante*.

(*o*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20, which makes ss. 11—14, *inter alia*, relating to copyright in books, applicable to performing right in dramatic pieces and musical compositions.

(*p*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8 (2).

author to the British performing right (*q*). The performance of a dramatic piece or musical composition, however, does not constitute publication according to the law of those countries (*r*); and, except in a few of those countries (*s*), there are no formalities or conditions to be complied with, in order to secure the performing right, unless the work is published in printed form.

Registration of works published abroad.

420. A foreign register is kept at Stationers' Hall in which entries may be made of musical compositions first published abroad, and unless they are so entered, summary proceedings under the Musical Copyright Act, 1906 (*t*), for offences relating to pirated copies, cannot be taken in respect of them (*a*). Such registration, however, is not a condition precedent to the acquisition of the performing right in works published since 1887, or to any action or proceedings for infringement of such right (*b*).

SECT. 3.—*Assignment.*

Effect of death or bankruptcy.

421. Performing right in a dramatic piece or musical composition passes, upon the death or bankruptcy of the proprietor, in the same manner as the copyright in books (*c*).

Assignment in writing.

422. An assignment of performing right must be in writing (*d*). It need not be by deed or witnessed (*e*), and may be signed by a duly authorised agent of the proprietor (*f*). The document may be quite informal, and general words are sufficient (*g*). Registration of such assignment is not necessary (*h*).

(*q*) See note (*i*), p. 141, *ante*.

(*r*) Declaration of Paris, 1896; and see note (*p*), p. 177, *ante*.

(*s*) In Italy a manuscript copy of a play which has been performed must be presented within three months for *visa* at the prefecture of the province with a declaration reserving the performing right (law of 1882, arts. 23, 27). In Spain a manuscript copy of a play must be deposited at the Ministry of Agriculture within a year from the date of performance (law of 1879, art. 36).

(*t*) 6 Edw. 7, c. 36.

(*a*) See note (*t*), p. 170, *ante*.

(*b*) In the case of works first published in foreign countries prior to 1887, certain formalities and conditions, including registration, were necessary (International Copyright Act, 1844 (7 & 8 Vict. c. 12); see p. 171, *ante*).

(*c*) By s. 20 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), the provisions of s. 3 relating to copyright in posthumous works are made applicable to performing right in posthumous dramatic pieces or musical compositions. As to the assignment of copyright in dramatic pieces and musical compositions, see p. 157, *ante*.

(*d*) *Eaton* v. *Lake* (1888), 20 Q. B. D. 378, C. A.; *Roberts* v. *Bignell* (1887), 3 T. L. R. 552. "Consent in writing" is required by the Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2; see p. 159, *ante*.

(*e*) *Marsh* v. *Conquest* (1864), 17 C. B. (N. S.) 418; *Cumberland* v. *Copeland* (1862), 1 H. & C. 194, Ex. Ch.

(*f*) *Morton* v. *Copeland* (1855), 16 C. B. 517. See also *Dennison* v. *Ashdown* (1897), 13 T. L. R. 226, where a written assignment was inferred. For a form of assignment of performing rights, see Encyclopædia of Forms, Vol. V., p. 327.

(*g*) Thus, the words "All property, interest, and benefit" in a musical composition have been held to pass the performing right (*Ex parte Hutchins* (1879), 4 Q. B. D. 483, C. A.; and compare *Lacy* v. *Rhys* (1864), 4 B. & S. 873; *Lacy* v. *Toole* (1867), 15 L. T. 512). But see *Edwardes* v. *Cotton* (1902), 19 T. L. R. 34, where the words "your song," in the handwriting of the composer, written upon a copy of the musical composition were held to be insufficient.

(*h*) *Marsh* v. *Conquest*, *supra*; *Lacy* v. *Rhys*, *supra*.

SECT. 3.
Assignment.

An assignment in writing of the copyright in a dramatic piece or musical composition does not, in the absence of expressed intention, convey the performing right (*i*).

Entry in register.

423. The registered proprietor of the performing right in a dramatic piece or musical composition can assign his interest, or any portion of it, by an entry in the register at Stationers' Hall, on payment of five shillings; and such assignment is effectual in law, without stamp or duty (*k*). An assignment of copyright in a dramatic piece or musical composition made by entry in the register at Stationers' Hall will not convey the performing right to the assignee, unless the entry expresses the intention of the parties that the performing right, as well as the copyright, should be assigned (*l*).

Partial assignment.

424. The performing right may be partially assigned. The author or his assignee may grant the right of representing a dramatic piece within a certain area; he can assign the right for London only (*m*), or in the provinces (*n*), or in the colonies (*o*), and the assignee can sue in his own name for infringement of such right.

Licence.

425. Without assigning his performing right, the proprietor thereof may grant a licence to any person to represent a dramatic piece, with any limitation as to a specified number of performances, or for a certain period, or within a particular area (*p*). Every licence must be in writing (*a*), and an entry of it may be made in the register at Stationers' Hall, though such entry is not essential (*b*). A duly certified copy of such entry is *primâ facie* evidence of the licence in all courts and summary proceedings, but it may be rebutted by other evidence (*b*).

SECT. 4.—*Infringement.*

SUB-SECT. 1.—*Dramatic Pieces.*

Infringement.

426. It is an infringement of the performing right to represent or cause to be represented in public (*c*) a dramatic piece, or any

(*i*) *Marsh* v. *Conquest* (1864), 17 C. B. (N. S.) 418, *per* ERLE, C.J., at p. 426.

(*k*) Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 13, 20. The entry must be in the form given in the schedule to the Act, and should contain the name and place of abode of the assignee (s. 13); but the form omits all mention of the "place of abode"; see *Wood* v. *Boosey* (1867), L. R. 2 Q. B. 340. For the form of entry, see Encyclopædia of Forms, Vol. V., p. 321.

(*l*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 22. The section only applies to assignments made by entry in the register in the manner described by s. 13 (*Ex parte Hutchins* (1879), 4 Q. B. D. 483, C. A.; *Lacy* v. *Rhys* (1864), 4 B. & S. 873). As to written assignments of copyright, see p. 159, *ante*.

(*m*) *Taylor* v. *Neville* (1878), 47 L. J. (Q. B.) 254, C. A.

(*n*) *Tree* v. *Bowkett* (1896), 74 L. T. 77.

(*o*) *Holt* v. *Woods* (1896), 17 New South Wales Law Reports (Equity), 36.

(*p*) See *Duck* v. *Mayeu* (1892), 8 T. L. R. 339.

(*a*) *Edwardes* v. *Cotton* (1903), 19 T. L. R. 34; *Eaton* v. *Lake* (1888), 20 Q. B. D. 378, C. A.; see note (*h*), p. 159, *ante*.

(*b*) Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 11, 13, and 20.

(*c*) For the meaning of "in public," see p. 175, *ante*.

material part of it (*d*), without the written consent of the proprietor of such right (*e*).

Dramatic piece.

The expression "dramatic piece" includes every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment (*f*). It should have a story or plot, and must at least be capable of being printed and published (*g*). Mere stage business, apart from words and connected story, cannot be the subject of performing right; but scenic effects and situations may form part of a dramatic piece, and if there is performing right in the work as a whole, the protection extends to its accessories (*h*).

A song is a dramatic piece, if it requires, for its proper representation, acting, and possibly scenery; but if neither of these be requisite to an efficient representation, the song is not a dramatic piece (*i*).

Dramatisation of novel.

427. A novel is not a dramatic piece ready and fit for representation on the stage. Consequently, the author of a novel has the copyright in his book, but has no performing right in it according to English law (*k*).

When a novel is published, any person may make use of the plot, the characters and dramatic situations, for the purpose of a dramatic piece, but he may be restrained from taking the conversation from a novel and using it as dialogue in a play, on the ground that this is an infringement of the copyright (*l*).

If the author of a novel writes a dramatic piece based upon the novel, any person who subsequently dramatises the novel, and performs his work, may be liable for infringement of the novelist's performing right in the earlier dramatic piece (*m*); but there may be two dramatic pieces based upon the same novel without any infringement of the performing right (*n*), just as there may be two novels derived from a common source without an infringement of copyright (*o*).

(*d*) See p. 184, *post*, and the cases cited in note (*g*), *infra*.

(*e*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2.

(*f*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2; and see the definition in Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1.

(*g*) *Tate* v. *Fullbrook*, [1908] 1 K. B. 821, C. A.; *Karno* v. *Pathé Frères* (1908), 99 L. T. 114; affirmed without dealing with this point (1909), 100 L. T. 260, C. A.; and see *Bishop* v. *Viviana Co.* (1909), *Times*, January 15, 1909.

(*h*) *Tate* v. *Fullbrook*, *supra*, *per* FARWELL, L.J., at p. 832; *Chatterton* v. *Cave* (1878), 3 App. Cas. 483; *Beere* v. *Ellis* (1889), 5 T. L. R. 330; *Tree* v. *Bowkett* (1896), 74 L. T. 77; *Nethersole* v. *Bell* (1903), *Times*, 31st July, 1903.

(*i*) *Fuller* v. *Blackpool Winter Gardens and Pavilion Co.*, [1895] 2 Q. B. 429, C. A.; *Russell* v. *Smith* (1848) 12 Q. B. 217; *Clark* v. *Bishop* (1872), 25 L. T. 908.

(*k*) *Toole* v. *Young* (1874), L. R. 9 Q. B. 523; *Warne & Co* v. *Seebohm* (1888), 39 Ch. D. 73.

(*l*) *Warne & Co.* v. *Seebohm*, *supra*; *Tinsley* v. *Lacy* (1863), 1 Hem. & M. 747. The infringement consists in making a copy of a part of the book, even if such copy is in manuscript for the use of the actors, or for delivery to the Lord Chamberlain in order to obtain a licence.

(*m*) *Reade* v. *Conquest* (1862), 11 C. B. (N. S.) 479; *Schlesinger* v. *Turner* (1890), 63 L. T. 764.

(*n*) *Toole* v. *Young*, *supra*.

(*o*) *Schlesinger* v. *Bedford* (1890), 63 L. T. 762; and see *Reichardt* v. *Sapte*, [1893] 2 Q. B. 308, 311, 312.

SECT. 4. Infringement.

What amounts to infringement.

428. It is not essential to an infringement of performing right that the words of the dialogue should be the same. The dramatic situations and incidents of a scene may be a material part of the whole piece, and the court will have regard to the value and dramatic importance of what is taken, even though the portion may be small and the actual words are not copied (*p*).

There must be certainty with regard to the subject-matter of performing right; and therefore verbal alterations and additions, known as "gag," which vary from week to week or from night to night are not entitled to protection (*q*).

Foreign dramatic pieces.

429. The performance of an English adaptation of a dramatic piece, first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886, is an infringement of the performing right, if the adaptation is only a reproduction of the work in another form, with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work (*r*).

The proprietor of the performing right in a dramatic piece first published in any one of the foreign countries of the union constituted under the Berne Convention, 1886, can prevent unauthorised performances of an English translation of the work at any time during ten years from the publication of the original work; and if, before the expiration of the ten years, he has published an English translation, he is entitled to the performing right in the translation during the statutory period from the date of publication of the original work (*s*).

The performance of an unauthorised English translation of a dramatic piece first published in one of the foreign countries of the union constituted under the Berne Convention, 1886, is not an infringement, if it is produced after the period of ten years from the date of publication of the original work, and no authorised translation of the latter has been made (*t*).

A translation means a translation of the whole work interpreted as accurately as possible, so as to make known the foreign work through the medium of an English version (*a*). It need not be literal, if it is substantially a translation (*b*). An English version of a foreign dramatic piece with English characters, scenes, and

(*p*) See cases cited in note (*g*), p. 183, *ante*.

(*q*) *Tate* v. *Fullbrook*, [1908] 1 K. B. 821, C. A., *per* FARWELL, L.J., at p. 832; and see *Bishop* v. *Viviana Co.* (1908), *Times*, January 15, 1909.

(*r*) Berne Convention 1886, art. 10; International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 6; and Orders in Council, 28th November, 1887, and 7th March, 1898, s. 6. "Fair adaptations" made prior to 1887 were not infringements (International Copyright Act, 1852 (15 & 16 Vict. c. 12), s. 6), and valuable rights acquired therein and subsisting in 1887 are kept alive by the International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 6; see p. 172, *ante*.

(*s*) Berne Convention, 1886, arts. 9 and 5; see pp. 149, 150, *ante*.

(*t*) *Ibid.*

(*a*) *Wood* v. *Chart* (1870), L. R. 10 Eq. 193, *per* JAMES, V.-C., at p. 205; and see p. 150, *ante*.

(*b*) *Lauri* v. *Renad*, [1892] 3 Ch. 402, C. A., *ver* KEKEWICH, J., at pp. 414, 415.

manners substituted for the foreign ones, with substantial omissions and alterations, is not a translation, but an adaptation (*c*).

Persons liable for infringement.

430. Any person who takes part in an unauthorised public performance of a dramatic piece is liable for infringement (*d*).

The proprietor of a theatre where such performance takes place is not necessarily liable for infringement (*e*); but if the company who perform the piece and the stage-manager who produces it are in his employment, he is liable for causing it to be represented (*f*). He is liable also where he employs an actor to give a dramatic performance, although he does not select the particular piece performed (*g*).

A stage-manager who is instructed to produce a dramatic piece, and who, by the terms of his employment, cannot engage or dismiss the actors or forbid the performance, is not liable for infringement (*h*).

Cinematographs.

431. Causing a public representation by cinematograph of a dramatic piece which is a literary composition, containing a plot or story capable of being published in printed form, constitutes, it would seem, an infringement of the performing right (*i*).

Selling a cinematograph film with knowledge that it is intended to be used for the purpose of representing a dramatic piece does not make the seller liable, even if it is actually used, and if the representation amounts to an infringement of the performing right (*j*).

Innocent infringement.

432. In an action for infringement of the performing right in a dramatic piece it is not necessary for the plaintiff to show that the infringement by the defendant was wilful (*k*).

Remedies.

433. The remedies for infringement of the performing right in a dramatic piece are an action for damages (*l*), and an

(*c*) *Wood* v. *Chart* (1870), L. R. 10 Eq. 193.

(*d*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2.

(*e*) *Lyon* v. *Knowles* (1863), 3 B. & S. 556; *Russell* v. *Briant* (1849), 8 C. B. 836.

(*f*) *Marsh* v. *Conquest* (1864), 17 C. B. (N. S.) 418; see also *Roberts* v. *Bignell* (1887), 3 T. L. R. 552.

(*g*) *Monaghan* v. *Taylor* (1886), 2 T. L. R. 685, which case was decided under the Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2, and the infringement had reference to the singing of a copyright song. Under the Copyright (Musical Compositions) Act, 1888 (51 & 52 Vict. c. 17), s. 4, which would now be applicable to such a case, the proprietor of a theatre is not liable unless he wilfully causes or permits the performance of a musical composition knowing it to be unauthorised (see p. 187, *post*). The liability with regard to dramatic pieces, however, remains unchanged. See also *Cole* v. *Gear* (1888), 4 T. L. R. 246.

(*h*) *French* v. *Day* (1893), 9 T. L. R. 548.

(*i*) *Karno* v. *Pathé Frères* (1909), 100 L. T. 260, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 262, approving *Karno* v. *Pathé Frères* (1908), 99 L. T. 114, *per* JELF, J., at p. 116.

(*j*) *Ibid.*

(*k*) *Lee* v. *Simpson* (1847), 3 C. B. 871; *Reade* v. *Lacy* (1861), 1 John. & H. 524.

(*l*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2; see also *Adams* v. *Batley* (1887), 18 Q. B. D. 625, C. A.

SECT. 4. Infringement.

injunction (*m*) to restrain further infringement, if it is threatened or intended. The amount of damages for which the offender is liable is not less than £2 for each performance, or the full amount of the benefit or advantage arising from the performances, or the injury or loss sustained by the plaintiff therefrom, whichever is the greater damages (*n*).

The plaintiff is also entitled to costs on the High Court scale, even if only £2 is recovered as damages (*o*).

An action for infringement of the performing right in a dramatic piece must be brought within a year from the date of the performance complained of (*p*).

SUB-SECT. 2.—*Musical Compositions.*

Infringement.

434. It is an infringement of the performing right in a musical composition to perform it, or any material part of it (*q*), in public (*r*), or to cause it, or any material part of it, to be so performed, without the written consent of the proprietor of such right (*r*).

An unauthorised performance of a musical composition in public by means of mechanical instruments, such as gramophones, pianolas, or æolians, constitutes, it would seem, an infringement of the performing right (*a*).

What is a material part taken from a musical composition, so as to constitute an infringement, is a question of fact in each case (*b*). If a composer takes from the composition of another a number of consecutive bars which form the entire air or melody, it is a piracy. But such bars may be taken in a different order, or broken by the intersection of others, in such a manner as not to constitute a piracy. It must depend on whether the air taken is substantially the same as the original (*c*).

The adaptation of the airs of an opera, in which there is subsisting copyright, in the form of quadrilles and waltzes, is an infringement of the rights in the opera (*d*).

(*m*) See note (*l*), p. 166, *ante*.

(*n*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2; see also *Adams* v. *Batley* (1887), 18 Q. B. D. 625.

(*o*) *Reeve* v. *Gibson*, [1891] 1 Q. B. 652, C. A.

(*p*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 3.

(*q*) See note (*c*), *infra*.

(*r*) For the meaning of "in public," see note (*b*), p. 175, *ante*. The Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), is made applicable to musical compositions by the Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20. As to infringement of copyright in musical compositions, see pp. 170, 171, *ante*.

(*a*) Such performances in private are allowable (*Boosey* v. *Whight*, [1900] 1 Ch. 122, C. A., *per* LINDLEY, M.R., at p. 123).

(*b*) *Planché* v. *Braham* (1837), 4 Bing. (N. C.) 17.

(*c*) *D'Almaine* v. *Boosey* (1835), 1 Y. & C. (EX.) 289, *per* Lord LYNDHURST, C.B., at p. 302.

(*d*) "The mere adaptation of the air, either by changing it to a dance, or by transposing it from one instrument to another, does not, even to common apprehensions, alter the original subject. Substantially the piracy is where the

SECT. 4. Infringement.

435. The addition of a prelude and accompaniment to a non-copyright melody entitles the adapter to sue for infringement of his rights in the musical composition (*e*).

Arrangements.

436. A person who arranges a pianoforte score from an opera composed by another is the author of the arrangement for the pianoforte (*f*), but he is not entitled to publish the arrangement without the consent of the proprietor of the copyright in the opera (*g*). The composer of the opera cannot be described as the author of the pianoforte arrangement; but he can restrain its publication as being an infringement of his copyright (*h*).

Persons liable.

437. Except in the case of an opera or stage play (*i*) performed in a theatre or other place of public entertainment duly licensed for stage plays, the proprietor, tenant, or occupier of any place, at which an unauthorised representation or performance of a musical composition is given, is not liable for any penalty or damages in respect of such infringement, unless he wilfully causes or permits the performance knowing it to be unauthorised (*k*).

Innocent infringement.

438. In an action for infringement of the performing right in a musical composition it is not necessary to prove that the infringement was wilful (*l*).

Remedies.

439. The remedies for infringement of the performing right in a musical composition are an action for damages (*m*), and an injunction (*n*) to restrain further infringement, where it is threatened or intended.

The amount of the penalty or damage in any such action or proceedings is such sum as the court or judge thinks reasonable,

appropriated music, though adapted to a different purpose from the original, may still be recognised by the ear" (*D'Almaine* v. *Boosey* (1835), 1 Y. & C. (EX.) 289, *per* Lord LYNDHURST, C.B., at p. 302).

(*e*) *Lover* v. *Davidson* (1856), 1 C. B. (N. S.) 182; *Leader* v. *Purday* (1849), 7 C. B. 4.

(*f*) *Wood* v. *Boosey* (1868), L. R. 3 Q. B. 223, Ex. Ch.; see also *Boosey* v. *Fairlie* (1877), 7 Ch. D. 301, C. A., at p. 317.

(*g*) *Wood* v. *Boosey*, *supra*, *per* KELLY, C.B., at p. 230; also in court below (1867), L. R. 2 Q. B. 340, *per* BLACKBURN, J., at p. 354.

(*h*) *Ibid.*, as reported L. R. 3 Q. B. 223, *per* KELLY, C.B., at p. 229. As to "adaptations and arrangements of music," see also Berne Convention, 1886, art. 10.

(*i*) For the definition of "stage play," see Theatres Act, 1843 (6 & 7 Vict. c. 68), s. 23; *Wigan* v. *Strange* (1865), L. R. 1 C. P. 175.

(*k*) Copyright (Musical Compositions) Act, 1888 (51 & 52 Vict. c. 17), s. 3; *Sarpy* v. *Holland*, [1908] 2 Ch. 198, C. A.; *Moul* v. *Coronet Theatre* (1903), *Times*, February 4, 1903; and see note (*g*), p. 185, *ante*.

(*l*) *Lee* v. *Simpson* (1847), 3 C. B. 871. For the exception in the case of the proprietor, tenant, or occupier of a theatre, see *supra*.

(*m*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2, applied to musical compositions by Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20. As to the remedies of foreign authors, forum, and evidence, see p. 142 *ante*.

(*n*) See *Chappell* v. *Davidson* (1856), 8 De G. M. & G. 1; and p. 166, *ante*.

SECT. 4. Infringement.

and may be merely nominal (*o*). The costs are in the absolute discretion of the court (*p*).

Such action or proceedings must be brought within a year from the date of the performance complained of (*q*).

Part III.—Artistic Copyright.

SECT. 1.—*In General.*

SUB-SECT. 1.—*Unpublished Works.*

Rights of author.

440. The author of any unpublished artistic work is entitled at common law to a proprietary right or interest therein (*r*). He can restrain any person from making and publishing copies of the work, and he has the right of acquiring by publication copyright for the statutory term (*s*).

The expression "artistic work" includes paintings, drawings, and photographs; prints, engravings, and lithographs; sculpture, models, and casts (*t*).

The word "author" includes the maker of a painting, drawing, or photograph; the inventor, designer, or engraver of a print, engraving, or lithograph (*u*); the person who makes an article of sculpture, or causes such work to be made (*a*).

The author must be a British subject or resident within the dominions of the Crown, or belong to a country which has a copyright treaty or convention with Great Britain (*b*).

Upon publication the common law right of the author is superseded by statutory copyright (*c*).

SUB-SECT. 2.—*Published Works.*

Persons entitled to copyright.

441. The author (*d*), or his assignee, of an artistic work (*d*) first published in (1) the United Kingdom, or (2) any British possession (*e*), or (3) any one of the foreign countries of the union

(*o*) Copyright (Musical Compositions) Act, 1888 (51 & 52 Vict. c. 17), s. 1. In a substantial case, however, the plaintiff may recover damages estimated on the alternative basis relating to dramatic pieces (see p. 186, *ante*).

(*p*) Copyright (Musical Compositions) Act, 1888 (51 & 52 Vict. c. 17), s. 2.

(*q*) Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 3; Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 20.

(*r*) *Mansell* v. *Valley Printing Co.*, [1908] 2 Ch. 441, C. A.; *Prince Albert* v. *Strange* (1849), 1 Mac. & G. 25; *Turner* v. *Robinson* (1860), 10 I. Ch. R. 121.

(*s*) As to paintings, drawings, and photographs, see note (*h*), p. 191, *post*.

(*t*) See the definition of "artistic work" in the International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 11. An architect has copyright in his drawings, or prints made therefrom, but he has no exclusive right to reproduce buildings erected from his plans, there being no "right of re-edification" in English law (see Additional Act of Paris, 1896, art. 2).

(*u*) See p. 200, *post*.

(*a*) See p. 206, *post*.

(*b*) See pp. 138, 139, *ante*.

(*c*) See note (*i*), p. 189, *post*.

(*d*) See *supra*.

(*e*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8.

constituted by the Berne Convention, 1886 (*f*), is entitled to copyright in the United Kingdom (*g*), subject to compliance with the several formalities and conditions relating to such works respectively (*h*). This statutory copyright commences on publication (*i*).

Publication.

The authorities contain no precise definition of what constitutes publication of an artistic work. Such work, however, is published when it is publicly exhibited for sale (*k*) or sold (*l*).

Thus, publication of a painting, drawing, or photograph may be made by publicly exhibiting the work for sale, and it apparently takes place the moment it is exposed to the view of the public (*m*). Placing the work in a shop window or showroom for sale is publication (*n*). A sale or disposition of any painting, drawing, or photograph may constitute publication; and the copyright should

(*f*) See note (*d*), p. 139, *ante*.

(*g*) Copyright in an artistic work extends to the whole of the United Kingdom, but not to any part of the British dominions outside the United Kingdom (see *Graves & Co., Ltd.* v. *Gorrie*, [1903] A. C. 496, P. C.), except under local Acts or ordinances. In the case of a work first published in a British possession, where a local law or ordinance gives copyright to the author, the latter is entitled to copyright in the United Kingdom under the International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8, as well as in such British possession under the local Act or ordinance.

(*h*) For the formalities and conditions, see pp. 195, 201, 207, *post*.

(*i*) What amounts to publication of an artistic work is not stated in the Copyright Acts, nor is there any precise authority upon the point; and the difficulty of determining the question has been advanced as a reason for concluding that copyright must commence from the making of a picture, and not from the date of its publication. It is clear, however, that the common law right of the author in an unpublished work ceases from the moment that the work is published (*Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815). Publication is, therefore, an ascertainable fact; and the Act creating statutory copyright in paintings, drawings, and photographs (Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68)) contemplates the copyright commencing as soon as the work is sold or disposed of by the artist (see pp. 191, 192, *post*). Upon any sale or disposition of the work the copyright may pass to the purchaser or be reserved as the property of the artist (s. 1), and registration of the copyright may take place the moment the work passes out of the artist's hands. It is submitted, therefore, that any sale or disposition of such work constitutes publication as effectually as publicly exhibiting it or exposing it for sale.

(*k*) *Britain* v. *Hanks Brothers & Co.* (1902), 18 T. L. R. 525. By the Declaration of Paris, 1896, which is binding upon all the countries of the union constituted under the Berne Convention, 1886, with the exception of Great Britain, the expression "published works" in the Convention and Additional Act, 1896, is interpreted as meaning works issued from the press to the public; consequently, it is declared, the exhibition of a work of art does not constitute publication under the Convention. In *Turner* v. *Robinson* (1860), 10 I. Ch. R. 510, C. A., the exhibition of a picture in public for the purpose of obtaining subscribers for engravings of the work, and with certain restrictions relating to copying, was not regarded as publication. This decision was given before any statutory copyright existed in paintings, drawings, and photographs. Lending photographs for the purpose of making copies is not publication (*Mayall* v. *Higbey* (1862), 1 H. & C. 148).

(*l*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1; see *supra*.

(*m*) *Turner* v. *Robinson* (1860), 10 I. Ch. R. 510, C. A., *per* BRADY, L.C., at p. 516.

(*n*) *Britain* v. *Hanks Brothers & Co.*, *supra*. As to the publication of a "design," see *Blank* v. *Footman, Pretty & Co.* (1888), 39 Ch. D. 678; *Daglish* v. *Jarvie* (1850), 2 Mac. & G. 231.

SECT. 1 In General.

be registered immediately upon the work passing out of the hands of the artist (*o*).

Statutory period.

442. The statutory term of copyright in artistic works first published in the United Kingdom varies according to the category to which such works belong (*p*). In the case of any artistic work first published in one of the foreign countries of the union constituted by the Berne Convention, 1886 (*q*), the period of British copyright in the United Kingdom is the term of protection allowed by the law of the country where the work is first published. If publication is made simultaneously in two or more countries of the union, and if the period of protection in those countries differs, the protection accorded in the United Kingdom will be for the shorter of the two periods (*r*).

Registration.

443. Registration of a painting, drawing, or photograph first published in the British dominions is essential to the enjoyment of copyright under the Fine Arts Copyright Act, 1862 (*s*), and a certified copy of the entry is admissible in evidence in all courts as *primâ facie* proof of title, but it may be rebutted by other evidence (*s*). In the case of any other (*t*) artistic work so published, registration is not provided for, so that other evidence of title must be given, except in the case of prints published as a book and capable of registration under the Copyright Act, 1842 (*a*).

Breach of confidence.

444. Apart from copyright, where an artistic work is intrusted to a person for a particular purpose, the court will restrain him from making any improper use of the work; and, although he may be employed to make copies, he will not be allowed to make copies for his own use or for sale, and, if he does so, he will be liable in damages to his employer, whether the latter is the registered proprietor of the copyright or not, upon the ground of abuse of confidence or breach of contract (*b*).

(*o*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 1, 4; *Petty* v. *Taylor*, [1897] 1 Ch. 465, *per* KEKEWICH, J., at p. 472; and see note (*i*), p. 189, *ante*.

(*p*) As to paintings, drawings, and photographs, see p. 192, *post*; as to prints, engravings, and lithographs, p. 201, *post*; and as to sculpture, models, and casts, p. 207, *post*.

(*q*) See p. 141, *ante*.

(*r*) Berne Convention, 1886, art. 2; International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 2 (3); *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73, *per* KEKEWICH, J., at pp. 77, 78.

(*s*) 25 & 26 Vict. c. 68, ss. 4, 5; see pp. 195, 197, *post*. For the form of entry, see Encyclopædia of Forms, Vol. V., p. 322.

(*t*) See p. 188, *ante*.

(*a*) 5 & 6 Vict. c. 45, s. 24; see p. 145, *ante*; and p. 198, *post*. As to the evidence of registration of foreign works, remedies for their infringement, and forum, see p. 142, *ante*.

(*b*) *Mayall* v. *Higbey* (1862), 6 L. T. 362; *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D. 629, C. A.; *Murray* v. *Heath* (1831), 1 B. & Ad. 804. Where a photographer is employed to take a photograph for payment, he will be restrained from publishing copies of it without the consent of the employer, even though the latter has not registered, and is on that account precluded from suing for infringement of copyright (*Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345; and see p. 195, *post*).

SECT. 1. In General.

445. There is no copyright in any artistic work of an obscene, immoral or libellous character, which is unfit for sale or publication (*c*).

SECT. 2.—*Paintings, Drawings and Photographs.*

SUB-SECT. 1.—*In General.*

Persons entitled to copyright.

446. The author, or his assignee, of every original painting, drawing (*d*), or photograph, wherever it is made (*e*), which is first published in (1) the United Kingdom, or (2) any British possession (*f*), or (3) any one of the foreign countries of the union constituted by the Berne Convention, 1886 (*g*), is entitled to copyright in the United Kingdom provided he complies with the necessary formalities and conditions (*h*).

(*c*) *Fores* v. *Johnes* (1802), 4 Esp. 97; *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73. As to the restricted liability for the destruction of such work, see *Du Bost* v. *Beresford* (1810), 2 Camp. 511; *Austria* (*Emperor*) v. *Day and Kossuth* (1861), 4 L. T. 494, C. A.

(*d*) Where the value of a drawing consists not in the use of the original drawing for exhibition, but for the multiplication of copies of the original by a particular process, the original is a "drawing," capable of registration, and the copyright extends to the right of reproducing and multiplying copies by one or more methods (*Millar and Lang, Ltd.* v. *Polak*, [1908] 1 Ch. 433, *per* NEVILLE, J., at p. 440).

(*e*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1.

(*f*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8; see note (*g*), p. 189, *ante*.

(*g*) See note (*i*), p. 141, *ante*; *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q. B. 347, C. A.; *Hanfstaengl* v. *Smith* (*W. H.*) *& Sons*, [1905] 1 Ch. 519, at p. 521 (as to plaintiff's title).

(*h*) See p. 195, *post*. As to publication, see p. 189, *ante*. It has been stated that the copyright in such works commences upon the date when the painting, drawing, or photograph is made (*Tuck & Sons* v. *Priester* (1887), 19 Q. B. D. 629, C. A., *per* Lord ESHER, M.R., at p. 636); and if such view of the law were correct the common law right would exist concurrently with statutory copyright until publication. But statutory copyright is the exclusive right of multiplying copies of such works after publication (*ibid.*, *per* LINDLEY and LOPES, L.JJ., at pp. 640, 646; see also *Mansell* v. *Valley Printing Co.*, [1908] 1 Ch. 567, *per* SWINFEN EADY, J., at p. 573), and it is submitted that in the case of paintings, drawings, and photographs this right commences upon publication. The difficulty arises from the wording of the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1, which creates the statutory copyright in such works "made either in the British dominions or elsewhere," and omits any mention of publication. It is submitted, however, that the phrase must be taken in its entirety, and merely means that it is immaterial where the work is made, so long as the author is "a British subject or resident within the dominions of the Crown" (at the time of publication). The absence of any mention of publication may be explained on the ground that the statutory period of copyright is dependent upon the author's life, and there is no alternative term from the date of publication as in the case of books. It is clear that in the case of all artistic works (see p. 188, *ante*), except paintings, drawings, and photographs, the statutory period of copyright is for a number of years from the date of publication.

Whether statutory copyright commences from the time of making the picture or from the date of publication is a matter of considerable importance to the artist, because registration is essential for the protection of the statutory copyright. If the copyright commences the moment the picture is made, there can be no remedy for infringement unless the proprietor is registered. If the copyright commences from the date of publication, the remedies with respect to the common law right in unpublished works are available, without registration, at

SECT. 2. Paintings, Drawings and Photographs.

447. Copyright in a painting, drawing, or photograph means the exclusive right of copying, engraving, reproducing, and multiplying the painting or drawing, and the design thereof, or the photograph and its negative, by any means and in any size (*i*).

Extent of copyright.

It commences on publication and endures for the life of the author and seven years after his death (*k*); and it extends to the whole of the United Kingdom, but not to British possessions, except under local Acts or ordinances (*l*).

Requisites for copyright.

448. If the work is first published in any part of the British dominions, the author must be a British subject or resident in British dominions (*m*).

If the work is first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886, the formalities and conditions of that country must be complied with (*n*).

Assignment of copyright.

449. An assignment of copyright in a painting, drawing, or photograph, and any licence to use or copy the same or the design thereof by any means or process, must be in writing, signed by the proprietor of the copyright, or his agent appointed for that purpose in writing (*o*), subject to the exception, however, that, where the work is made to order for a good or valuable consideration, the copyright vests in the person on whose behalf it is made without any written assignment, and such person may be registered as proprietor of the copyright (*p*).

any time after the making of the picture and prior to its publication (*Mansell* v. *Valley Printing Co.*, [1908] 2 Ch. 441, C. A.).

(*i*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1.

(*k*) *Ibid.*, s. 1. For the case of joint authors, see *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627, C. A., *per* BOWEN, L.J., at p. 637.

(*l*) *Graves & Co., Ltd.* v. *Gorrie*, [1903] A. C. 496, P. C.; and see note (*g*), p. 189, *ante*.

(*m*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1. It is extremely doubtful whether the requirement that the author shall be a British subject or resident within the British dominions is not overridden by the provisions of the Berne Convention, 1886, Additional Act of Paris, 1896, and Orders in Council (see note (*i*), p. 141, *ante*). The effect of such provisions is to remove the disabilities of authors with respect to nationality, provided their works are first published in one of the countries of the union constituted by the Berne Convention, 1886. Moreover, the proclamation by the President of the United States (1st July, 1891), made under the authority of the American statute (amending Act, 1891, s. 13), recognises the United Kingdom as a country which permits to citizens of the United States the benefit of copyright on substantially the same basis as its own citizens. This proclamation was presumably made upon the assumption that American citizens residing in their own country could acquire British copyright in respect of works published in the United Kingdom. But see *Geissendörfer* v. *Mendelssohn* (1896), 13 T. L. R. 91, which, however, was decided before the Additional Act of Paris, 1896, came into operation.

(*n*) *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q. B. 347, C. A.; and see note (*i*), p. 141, *ante*.

(*o*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 3. As to assignment by entry in the register, see p. 195, *post*. A licence requires writing (*Strahan* v. *Graham* (1868), 17 L. T. 457, C. A.). For a form of assignment, see Encyclopædia of Forms, Vol. V., p. 328.

(*p*) *Petty* v. *Taylor*, [1897] 1 Ch. 465.

SECT. 2. Paintings, Drawings and Photographs.

An assignment of copyright in a painting, drawing, or photograph may be limited to the right of reproduction in a particular manner and in a particular size; and where the assignment is so restricted, the assignor retains a limited copyright, or the right of reproduction by other processes and in other sizes (*q*).

Sale of painting etc.

450. When the author of any painting, drawing, or photograph sells or disposes of the painting or drawing, or the negative of the photograph, he loses the copyright, unless it is expressly reserved by an agreement in writing signed, at or before the time of sale or disposition, by the purchaser or person to whom he disposes of it; but the copyright does not pass to such purchaser or person, unless at the time of such sale or disposition there is a written agreement to that effect, signed by the author or his duly authorised agent (*r*).

In the absence of such written agreement, there is no copyright in the work after such sale or disposal, and neither the author nor the owner of the painting, drawing, or negative of the photograph can prevent any person from making copies (*s*).

Work on commission.

451. When a painting, drawing, or photograph is made for or on behalf of any person for a good or valuable consideration (*t*), the copyright therein will belong to such person, unless it is expressly reserved under a written agreement, signed by such person at or before the time when the work passes out of the hands of the artist (*a*). In the absence of any such reservation, no written assignment is necessary to vest the copyright in the person on whose behalf the work is made (*b*); and he may be registered as proprietor of the copyright without any assignment being entered on the register (*b*).

Photographs.

Where a person employs a photographer to take a photograph in the ordinary way, and pays for the copies ordered, the copyright in the photograph belongs to the customer, unless there is a written agreement to the contrary effect (*c*). The property in the negative remains in the photographer, but he may not reproduce copies from it without the customer's consent (*c*). Even though nothing be said about payment, there is an implied promise on the part of the customer to pay the photographer, and the photograph is made

(*q*) *Lucas* v. *Cooke* (1880) 13 Ch. D. 872; *Tuck* v. *Canton* (1882), 51 L. J. (Q. B.) 363. The decision in the latter case, upon the point as to registration, seems open to question. An assignment for the purpose of bringing an action, with a condition that the assignee will not reproduce the work without the consent of the assignor, is not a valid assignment so as to entitle the assignee to sue without joining the assignor (*Landeker* v. *Wolff & Co.* (1907), 52 Sol. Jo. 45).

(*r*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1; see *Levi* v. *Champion & Co.* (1887), 3 T. L. R. 286. For a form of reservation of copyright, see Encyclopædia of Forms, Vol. V., p. 329.

(*s*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 2.

(*t*) As to what constitutes a good or valuable consideration, see *Melville* v. *Mirror of Life Co.*, [1895] 2 Ch. 531; *Stackemann* v. *Paton*, [1906] 1 Ch. 774. For a form of agreement for work on commission, see Encyclopædia of Forms, Vol. V., p. 352.

(*a*) See note (*i*), p. 189, *ante*. The author must be capable of acquiring copyright (*Geissendörfer* v. *Mendelssohn* (1896), 13 T. L. R. 91).

(*b*) *Petty* v. *Taylor*, [1897] 1 Ch. 465, *per* KEKEWICH, J., at p. 472.

(*c*) *Boucas* v. *Cooke*, [1903] 2 K. B. 227, C. A.

SECT. 2. Paintings, Drawings and Photographs.

for a valuable consideration, so that the copyright vests in the customer (*d*). Notwithstanding that the customer, in such a case, has not registered himself at Stationers' Hall as proprietor of the copyright, and is therefore precluded from suing for infringement thereof, he can prevent the photographer from selling or exhibiting copies of the photograph without his consent, both on the ground of an implied contract not to use the negative for such purposes and also on the ground that such sale or exhibition is a breach of confidence (*e*).

Right of customer.

Where a person allows a photographer to enter his premises for the purpose of taking photographs of them on the chance of selling copies to the owner of the premises, the photographs are regarded as having been made on behalf of the owner of the premises for a good consideration, and the copyright in the photographs, in the absence of a written agreement, belongs to such person, and not to the photographer (*f*).

Photographs taken by permission.

Where a photographer solicits a person to have a photograph taken free of charge, the copyright therein belongs to the photographer; and it makes no difference if such person afterwards orders copies to be made by the photographer and pays for them (*g*); mere permission to take the photograph is not a valuable consideration (*h*). But if the photographer sells the negative the copyright is altogether lost, unless it is expressly reserved in writing, duly signed by the purchaser, or is transferred to the purchaser under a written agreement duly signed by the photographer or his authorised agent (*i*).

Author of photograph.

452. The author of a photograph, in ordinary circumstances, is the person who actually takes the photograph; but where another person superintends the arrangement, and forms the picture by putting the objects or people into position, or by merely giving directions, and generally controls the operation, such person is the author of the photograph (*k*). If a person employed by another person, or firm, or company is sent to take a photograph, he is the author and should be registered as such (*l*); but his employers may be registered as proprietors of the copyright, where they are entitled to it as the persons on whose behalf the photograph is made for a valuable consideration (*m*).

Right to copy.

453. Any painting, drawing, or photograph, in which there is no copyright, may be copied or used, although somebody else may

(*d*) *Boucas* v. *Cooke*, [1903] 2 K. B. 227, C. A.

(*e*) *Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345; *Bolton* v. *London Exhibitions, Ltd., and Weiners, Ltd.* (1898), 14 T. L. R. 550; *Stedall* v. *Houghton* (1901), 18 T. L. R 126; *Holmes* v. *Langfier* (1903), *Times*, November 9, 1903; *M'Cosh* v. *Crow & Co.* (1902), 5 F. (Ct. of Sess.) 670.

(*f*) *Stackemann* v. *Paton*, [1906] 1 Ch. 774.

(*g*) *Boucas* v. *Cooke*, *supra*, *per* COLLINS, M.R., at p. 236. For a form of agreement applicable in such a case, see Encyclopædia of Forms, Vol. V., p. 351.

(*h*) *Ellis* v. *Marshall & Son* (1895), 64 L. J. (Q. B.) 757.

(*i*) See p. 193, *ante*.

(*k*) *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627, C. A., *per* BRETT, M.R., at p. 632; *Melville* v. *Mirror of Life Co.*, [1895] 2 Ch. 531.

(*l*) *Ibid.*

(*m*) See p. 193, *ante*.

have copied it and acquired copyright in his own copy (*n*); and any person may make a work representing any scene or object, notwithstanding that there may be copyright in some work representing such scene or object (*o*).

Registration.

454. Registration at Stationers' Hall is essential to the enjoyment of copyright in any painting, drawing, or photograph first published in any part of the British dominions (*p*), other than a British possession where local registration is provided for (*q*). There is no limit of time, however, within which registration must be made. Such registration is not necessary in the case of a work first published in any of the foreign countries of the union constituted by the Berne Convention, 1886 (*r*).

Contents of entry.

An entry in the register is required in respect of the proprietorship of every copyright in such works and of every subsequent assignment thereof (*a*). The entry must contain the date of the agreement or assignment, the names of the parties thereto, the name and place of abode of the proprietor of the copyright and of the author of the work, together with a short description of the nature and subject of such work; and, if the person registering desires it, a sketch, outline, or photograph of the work may be deposited (*b*).

All the provisions relating to the keeping of the register (*c*), for inspecting the same, for searches and delivery of certified copies and their reception in evidence (*d*); the making of false entries in the register, and the production in evidence of false copies of entries (*e*); the application by persons aggrieved to expunge or vary an entry (*f*); the entries (*g*) and assignments (*h*) of copyright and proprietorship therein, are the same in the case of paintings,

(*n*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 2; *Hanfstaengl* v. *Empire Palace*, [1894] 3 Ch. 109, C. A., *per* LINDLEY, L. J., at pp. 125, 147.

(*o*) *Ibid.*

(*p*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 4; *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D. 629, C. A.; *Tuck* v. *Continental Printing Co.* (1886), 3 T. L. R. 150.

(*q*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8; see p. 197, *post*.

(*r*) *Hanfstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q. B. 1; *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q. B. 347, C. A.

(*a*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 4. "Subsequent" means subsequent to the first entry (*Troitzsch* v. *Rees* (1887), 3 T. L. R. 773, *per* STIRLING, J., at p. 774; and see *Graves' Case* (1869), L. R. 4 Q. B. 715, where it was held that a good title could be shown under the Act, although the original copyright of the author had not been registered).

(*b*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 4. The short description need not be so precise as in the case of a registered specification of a patent (*Ex parte Beal* (1868), L. R. 3 Q. B. 387, *per* BLACKBURN, J., at p. 392).

(*c*) See p. 152, *ante*.

(*d*) See p. 155, *ante*.

(*e*) See p. 157, *ante*.

(*f*) See p. 156, *ante*.

(*g*) See p. 152, *ante*.

(*h*) See p. 155, *ante*; *Troitzsch* v. *Rees*, *supra*. As to registration of the date of assignment to the trustee of a proposed company, see *Millar and Lang, Ltd.* v. *Polak*, [1908] 1 Ch. 433.

SECT. 2. Paintings, Drawings and Photographs.

drawings and photographs as they are in the case of books (*i*). There are, however, necessary variations in the form of entry, and the fee for registration differs in amount (*k*).

SUB-SECT. 2.—*Infringement.*

What amounts to infringement.

455. It is an infringement of copyright in a painting, drawing or photograph if any person, without the consent of the proprietor of the copyright, copies, engraves, reproduces or multiplies the painting or drawing or the design thereof, or the photograph or its negative, by any means whatever (*l*). It is immaterial whether the reproduction or copy is of the same size as the original work (*m*).

A copy may be roughly defined as that which comes so near the original as to suggest the original to the mind of the spectator (*n*). A copy of the work or its design may be made directly from the original painting, drawing, or photograph, or may be made by the use of intermediate copies, whether produced by means of photography, lithography, or any other process (*o*).

Whether what is complained of as an infringement is or is not a copy of the work or its design must always be a question of fact (*p*). In doubtful cases, the extent to which the copying has been carried, and the object sought to be attained by the copies, must be considered (*q*). The court will examine the degree of resemblance, and will take into consideration the commercial injury to the artist which can be proved or may reasonably be presumed (*a*).

What is not infringement.

456. Copyright in a painting, drawing, or photograph does not include the right to restrain representation or imitation by means other than painting, drawing, photography, or similar processes. The author is protected against the reproduction of his work by anything in the nature of a picture, for this may compete with his work in the market (*b*). In order to amount to an infringement of copyright, the copy or reproduction must be something which,

(*i*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 5.

(*k*) The fee for registration of a painting, drawing, or photograph is 1*s.* (*ibid.*, s. 4). For the fee payable on the registration of a book, see p. 152, *ante*.

(*l*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1. These are the words of the Act; but see p. 197, *post*. But where copies of copyright paintings are reproduced in a book, it is not an infringement to cut out such copies and to sell them separately mounted on cards (*Frost and Reed* v. *Olive Series Publishing Co.* (1908), 24 T. L. R. 649).

(*m*) *Ibid.*; and see *Bolton* v. *Aldin* (1895), 65 L. J. (Q. B.) 120.

(*n*) *Hanfstaengl* v. *Smith* (*W. H.*) *& Sons*, [1905] 1 Ch. 519, *per* KEKEWICH, J., at p. 524.

(*o*) *Hanfstaengl* v. *Baines & Co.*, [1895] A. C. 20, *per* Lord SHAND, at p. 30; *Ex parte Beal* (1868), L. R. 3 Q. B. 387, 394; *Gambart* v. *Ball* (1863), 14 C. B. (N. S.) 306.

(*p*) *Hanfstaengl* v. *Baines & Co.*, *supra*, *per* Lord HERSCHELL, L.C., at p. 24.

(*q*) *Hanfstaengl* v. *Newnes*, [1894] 3 Ch. 109, C. A., *per* LINDLEY, L.J., at p. 129; affirmed *sub nom. Hanfstaengl* v. *Baines & Co.*, *supra*; see also *London Stereoscopic Co.* v. *Kelly* (1888), 5 T. L. R. 169.

(*a*) *Hanfstaengl* v. *Smith* (*W. H.*) *& Sons*, *supra*, *per* KEKEWICH, J., at p. 525; *Hanfstaengl* v. *Baines & Co.*, *supra*, *per* Lord MACNAGHTEN, at p. 29.

(*b*) *Hanfstaengl* v. *Empire Palace*, [1894] 2 Ch. 1, C. A., *per* LINDLEY, L.J., at pp. 5, 6; as to "prints," compare pp. 203, 204, *post*.

if it were an original production, would itself be the subject-matter of copyright (*c*).

Consequently, a representation of a picture by waxwork figures, or a group of human beings arranged as shown in the picture, may be made without infringing the copyright in the picture (*d*); and sketches of such *tableaux vivants*, reproduced in a newspaper, are not copies, so as to amount to an infringement of the copyright in the original painting (*e*).

Subject.

There can be no copyright in the subject of a painting, drawing, or photograph, so as to give the author an exclusive right to any representation of the same subject (*f*).

Design.

Where a work is the representation of a familiar subject, there can only be a copy of the design, if the treatment of the subject is the same; and a variation in the details, such as the faces of the people, the mode of arranging the hair, the dresses, attitudes, and background, is sufficient to show that there has been no infringement of the design (*g*). If, however, the work complained of is in fact a copy or embodiment of the design, taken from the original work, it will be regarded as an infringement (*h*).

Proof of infringement.

457. Infringement of the copyright in a painting, drawing, or photograph, may be proved in any action or proceedings by producing the original work and the alleged copy. It is not, however, essential to produce the original work. Witnesses may be called to prove that they have seen the original, and that the work complained of is, in their opinion, an exact copy; or a photograph or engraving of the original work may be produced, and proved, and compared with the alleged copy (*i*).

Necessity for registration.

458. It is essential to any action or proceedings in respect of infringement of copyright in any painting, drawing, or photograph, or of any offence relating thereto, that the proprietor of the copyright should have been registered prior to the cause of action arising, or the time when the offence was committed. No action is sustainable, nor is any penalty recoverable, in respect of anything done before registration (*k*). Subject to this disability, registration may be made at any time during the statutory period of copyright.

(*c*) *Hanfstaengl* v. *Empire Palace*, [1894] 2 Ch. 1, C. A.

(*d*) *Ibid.*, at p. 8.

(*e*) *Hanfstaengl* v. *Newnes*, [1894] 3 Ch. 109, C. A.

(*f*) *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q. B. D. 99; *Hanfstaengl* v. *Baines & Co.*, [1895] A. C. 20, 27.

(*g*) *Hanfstaengl* v. *Baines & Co.*, *supra*, *per* Lord HERSCHELL, L.C., at p. 24.

(*h*) *Ibid.*, *per* Lord WATSON, at p. 28.

(*i*) *Lucas* v. *Williams & Sons*, [1892] 2 Q. B. 113, C. A., *per* Lord ESHER, M.R., at p. 116.

(*k*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 4; *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D. 629, C. A., where it was held by the majority of the court that, although the plaintiffs could not recover damages from the defendant for the making of the pirated copies before the registration, they were entitled to damages for the sale of such copies after the registration. Similarly, the importation of copies after registration, in pursuance of an order given before registration, has been held to be an infringement of copyright (*Millar and Lang, Ltd.* v. *Polak*, [1908] 1 Ch. 433). A registered proprietor cannot sue for infringements

SECT. 2. Paintings, Drawings and Photographs.

Illustrations in books.

Where any pictures, drawings, or photographs are published as illustrations in a book, the proprietor of the copyright in the letterpress must register under the Copyright Act, 1842 (*l*) (relating to books), and the proprietor of the copyright in the illustrations, if a different person, must be registered under the Fine Arts Copyright Act, 1862 (relating to paintings, drawings, and photographs (*m*)). But where the copyright in the letterpress and in the illustrations belongs to the same proprietor, registration under the Copyright Act, 1842, will be sufficient, and registration under the Fine Arts Copyright Act, 1862, is not required (*a*). If the copyright in all the illustrations belongs to the same proprietor, it will be sufficient if he registers the book under the Copyright Act, 1842, even though there be no copyright in the letterpress (*b*).

The same principle applies to illustrations in a newspaper or periodical. Registration of an early number of the newspaper or periodical covers subsequent issues and any supplement sold as part thereof (*c*). It also covers all illustrations contained therein if the copyright in the illustrations belongs to the registered proprietor of the copyright in the newspaper or periodical (*d*).

Remedies.

459. The statutory remedies for infringement of copyright in any painting, drawing, or photograph do not exclude any remedy available at common law or in equity (*e*). For any infringement of the exclusive right of multiplying copies of such works the registered proprietor of the copyright is entitled to an action for damages, or an account of profits, forfeiture of copies, and an injunction to restrain further infringement, if such is threatened or intended (*f*).

Action for damages.

460. An action for damages will lie against any person who, without the consent of the registered proprietor of the copyright, (1) repeats, copies, colourably imitates, or otherwise multiplies for sale, hire, exhibition, or distribution, any painting, drawing, or photograph or the design thereof, or the negative of any photograph; or (2) imports into any part of the United Kingdom, or sells, publishes, lets to hire, distributes, or offers for sale (*g*), hire, exhibition, or distribution, any copy or imitation of such work or the design thereof, or the negative of any photograph;

committed when an earlier proprietor was on the register (*Dupuy* v. *Dilkes* (1879), 48 L. J. (CH.) 682).

(*l*) 5 & 6 Vict. c. 45.

(*m*) 25 & 26 Vict. c. 68, and see *Petty* v. *Taylor*, [1897] 1 Ch. 465.

(*a*) *Marshall & Co.* v. *Bull* (*A. H.*), *Ltd.* (1901), 85 L. T. 77, C. A.

(*b*) *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267; *Grace* v. *Newman* (1875), L. R. 19 Eq. 623; *Maple & Co.* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369, C. A.; *Davis* v. *Benjamin*, [1906] 2 Ch. 491.

(*c*) *Comyns* v. *Hyde* (1895), 72 L. T. 250; *Bradbury* v. *Sharp*, [1891] W. N. 143.

(*d*) The cases cited in note (*b*), *supra*, are applicable to a newspaper, which is a book; see p. 142, *ante*.

(*e*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 11.

(*f*) See p. 165, *ante*.

(*g*) Quoting an approximate price in a negotiation for sale is not "offering for sale" (*Wolff* v. *Wood* (1903), *Times*, October 31, 1903).

or (3) causes or procures any of the above-mentioned acts to be done (*h*).

The plaintiff in such action may also obtain delivery to him of all unlawful repetitions, copies, imitations, and negatives of photographs, or damages for their detention or conversion (*h*).

In any such action the judge may, upon the application of the plaintiff or defendant respectively, make an order for an injunction, inspection or account (*i*).

Penalties.

461. In respect of any of the above-mentioned offences specified in (1), and also in respect of any of the offences mentioned in (2), if the latter were committed with knowledge that the repetition, copy, or other imitation was unlawfully made, the registered proprietor of the copyright can recover by action (*j*), or by summary proceedings before magistrates (*k*), penalties not exceeding £10 for each offence (*l*); and the court may order delivery up to him of all copies made without his consent, and all negatives of photographs for the purpose of obtaining such copies (*j*).

Fraudulent infringements.

462. An action, or summary proceedings before the magistrates, to recover penalties may be brought or instituted against any person who commits, or causes another person to commit, any of the following offences (*m*):—

(1) Fraudulently signing or affixing any name, initials, or monogram on any painting, drawing, or photograph, or the negative thereof.

(2) Fraudulently selling, publishing, exhibiting, disposing of, or offering for sale, exhibition, or distribution, any such work having thereon a false name, initials, or monogram.

(3) Fraudulently uttering, disposing of, or putting off a copy or colourable imitation of any such work, as having been made by the author of the work from which it was copied, whether there is copyright in the original work or not.

(4) Making, during the lifetime of the author and without his consent, copies of any such work, with any alteration made therein by some person other than the author, after the latter has sold or otherwise parted with the possession of such work; or, during such period and without such consent, knowingly selling, publishing, or offering for sale such work, or any copies of such work, so altered, or of any part thereof, as being the unaltered work of the author (*n*).

(*h*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 11.

(*i*) *Ibid.*, s. 9.

(*j*) *Ibid.*, ss. 6, 8.

(*k*) *Ibid.*, s. 8.

(*l*) A separate offence is committed in respect of every copy (*Ex parte Beal* (1868), L. R. 3 Q. B. 387; *Hildesheimer* v. *Faulkner* (*W. & F.*), *Ltd.*, [1901] 2 Ch. 552, C. A.; *Nicholls* v. *Parker* (1902), 18 T. L. R. 459, C. A.).

(*m*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 7. The penalties recoverable under ss. 6 and 7 are a punishment for what is in the nature of a criminal offence and additional to the right to recover damages (*ibid.*, s. 11; and see *Re Prince, Ex parte Graves* (1868), 3 Ch. App. 642). Consequently, interrogatories cannot be administered in an action to recover such penalties (*Martin* v. *Treacher* (1886), 16 Q. B. D. 505, C. A.).

(*n*) This offence may be committed whether the original work was made before or after the passing of the Act (Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 7).

SECT. 2. Paintings, Drawings and Photographs.

Any person aggrieved by such offences may recover a sum not exceeding £10, or double the price at which such copies, engravings, imitations, or altered works have been sold or offered for sale; and all such copies, engravings, imitations, and altered works are to be forfeited to the person whose name, initials or monogram have been so fraudulently used, or to his assigns or personal representatives (*o*).

Such penalties are not recoverable, however, unless the person whose name, initials or monogram have been so fraudulently used, or the artist to whom such spurious or altered work has been so fraudulently or falsely ascribed, was living within the period of twenty years before the time when the offence was committed (*p*).

Importation.

463. It is unlawful to import into the United Kingdom any repetitions, copies or imitations of any painting, drawing or photograph (*q*) which constitute an infringement of any copyright subsisting therein, whether such repetitions, copies or imitations were unlawfully made abroad, or in any part of the British dominions; and if the proprietor of the copyright declares that any imported goods are within this prohibition, the officers of customs are required to detain such goods (*r*).

Limitation of actions.

464. There is no special period of limitation fixed by the Fine Arts Copyright Act, 1862 (*a*). An action for infringement of copyright in any painting, drawing, or photograph is barred, therefore, by the Limitation Act, 1623 (*b*), unless it is brought within six years after the cause of action arises.

SECT. 3.—*Prints, Engravings and Lithographs.*

SUB-SECT. 1.—*In General.*

Persons entitled to copyright

465. The author, or his assignee (*c*), of any print which is first published in (1) the United Kingdom (*d*), or (2) any British possession (*e*), or (3) any one of the foreign countries of the union constituted by the Berne Convention, 1886 (*f*), is entitled to copyright in the United Kingdom provided he complies with the necessary formalities and conditions (*g*).

The "author" includes any person who—

(1) Invents, designs, engraves, etches, or works in mezzotinto

(*o*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 7.

(*p*) *Ibid.*

(*q*) This includes repetitions, copies, or imitations of the design of any such painting or drawing, or the negative of any such photograph (*ibid.*, s. 10).

(*r*) *Ibid.*, s. 10.

(*a*) 25 & 26 Vict. c. 68.

(*b*) 21 Jac. 1, c. 16, s. 3; see generally title LIMITATION OF ACTIONS.

(*c*) *Thompson* v. *Symonds* (1792), 5 Term Rep. 41. For a form of assignment, see Encyclopædia of Forms, Vol. V., p. 329.

(*d*) Prints and Engravings Copyright (Ireland) Act, 1836 (6 & 7 Will. 4, c. 59), s. 2; see note (*k*), p. 204, *post*.

(*e*) International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 8; see note (*g*), p. 189, *ante*.

(*f*) See note (*i*), p. 141, *ante*.

(*g*) See pp. 201 *et seq.*, *post*; as to publication, see p. 189, *ante*.

or chiaro-oscuro any print (*h*). Thus, an engraver who reproduces things in nature, as, for instance, plants, a house, or garden, is the author of the engraving (*i*);

(2) Causes or procures any print to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro from his own work, design, or invention (*k*). Even a person who is himself unable to draw, if he supplies the materials and information from which a design is made, and employs another to make it, may be the author (*l*);

(3) Engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be so engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, ancient or modern (*m*).

Definition of "print."

466. A "print" means any print whatsoever (*n*), including any historical print, or print of any portrait, conversation (*o*), landscape or architecture (*p*); map, chart or plan (*q*); and any print taken by lithography, or any other mechanical process by which prints or designs are capable of being multiplied indefinitely (*r*).

Copyright.

Copyright means the exclusive right of printing and reprinting, engraving (*s*), etching, or working in mezzotinto or chiaro-oscuro, or in any other manner copying, any print or any material part of it (*t*). It commences on publication, and endures for twenty-eight years from that date (*a*); and it extends to the whole of the United Kingdom, but not to British possessions, except under local Acts or ordinances (*b*).

Requisites for copyright.

467. If the work is first published in any part of the British dominions, the date of first publication, and the name of the proprietor, must be engraved upon each plate, and printed on every

(*h*) Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), s. 1.
(*i*) *Blackwell* v. *Harper* (1740), 2 Atk. 93.
(*k*) Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), s. 1.
(*l*) *Stannard* v. *Harrison* (1871), 24 L. T. 570. In the case of a painting, drawing, or photograph, such an employer could not be the author (*Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q. B. D. 99). He would be the proprietor of the copyright, however, in the absence of any written agreement (see p. 193, *ante*).
(*m*) Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), s. 2.
(*n*) *Ibid.*, s. 1. There can be no copyright in an indecent or libellous print (*Fores* v. *Johnes* (1802), 4 Esp. 97; *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73.
(*o*) That is, a kind of *genre* painting representing a group of figures (New English Dictionary, Vol II., p. 941).
(*p*) See note (*t*), p. 188., *ante*.
(*q*) See pp. 144, 145, *ante*.
(*r*) International Copyright Act, 1852 (15 & 16 Vict. c. 12), s. 14.
(*s*) The exclusive right of engraving and copying a painting or drawing and its design, or a photograph and its negative, belongs to the proprietor of the copyright in the painting, drawing, or photograph (see p. 192, *ante*).
(*t*) Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), s. 1; Prints Copyright Act, 1777 (17 Geo. 3, c. 57); Prints and Engravings Copyright (Ireland) Act, 1836 (6 & 7 Will. 4, c. 59). The words of the Act appear to be wider than the interpretation of them; see pp. 203, 204, *post*.
(*a*) Engraving Copyright Act, 1766 (7 Geo 3, c. 38), s. 7.
(*b*) See note (*g*), p. 189, *ante; Graves & Co., Ltd.* v. *Gorrie*, [1903] A. C. 496, P. C., although decided under the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), is applicable to other Copyright Acts where the scope of them is limited to the United Kingdom.

SECT. 3. Prints, Engravings and Lithographs.

print (*c*). It is sufficient if the proprietor's name is given, without describing him as the proprietor (*d*). The trade name of a firm is sufficient, and the names of the partners need not be stated (*e*). "The proprietor" means the proprietor at the date of publication, and the name of a subsequent proprietor should not be put upon the print, either by way of addition or substitution (*f*).

The day, month, and year of publication must be precisely stated (*g*). A print taken from the original plate, showing the name and date printed upon it, may be produced as evidence that these formalities have been complied with, without production of the plate itself, which may have been destroyed (*h*).

There is no registration of prints prescribed by English law.

Foreign publication.

If the work is first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886, the formalities and conditions of that country must be complied with. It seems that, in such a case, the formalities and conditions prescribed by English law are not essential (*i*), the effect of the Berne Convention being that an author who has complied with the formalities of the country of origin has done all that is necessary to entitle him to copyright in all the countries of the union, and that he need not also fulfil the formalities prescribed in each country of the union in which he claims copyright (*j*).

Licence.

468. A licence to engrave, etch, or copy in any manner a print must be in writing, signed by the proprietor of the copyright, and attested by two or more credible witnesses (*k*), and it appears probable that an assignment of the copyright in a print must be made in the same way. But any person who has purchased from the original proprietor of the copyright any plate for printing is regarded as being duly licensed to print and reprint from such plate (*l*).

(*c*) Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), s. 1; see p. 205, *post*. Compare the formalities and conditions as to sculpture, p. 207, *post*.

(*d*) *Blackwell* v. *Harper* (1740), 2 Atk. 93; *Newton* v. *Cowie* (1827), 4 Bing. 234.

(*e*) *Graves* v. *Ashford* (1867), L. R 2 C. P. 410, Ex. Ch.; *Rock* v. *Lazarus* (1872), L. R. 15 Eq. 104.

(*f*) *Thompson* v. *Symonds* (1792), 5 Term Rep. 41, *per* BULLER, J., at p. 45.

(*g*) *Sayer* v. *Dicey* (1770), 3 Wils. 60; *Mathieson* v. *Harrod* (1868), L. R. 7 Eq. 270; *Harrison* v. *Hogg* (1794), 2 Ves. 323.

(*h*) *Thompson* v. *Symonds*, *supra*.

(*i*) See note (*i*), p. 141, *ante*.

(*j*) *Sarpy* v. *Holland*, [1908] 2 Ch. 198, C. A., *per* COZENS-HARDY, M.R., at p. 207. In *Avanzo* v. *Mudie* (1854), 10 Exch. 203, it was held that the proprietor of copyright in a print, first published abroad, must comply with the formalities prescribed by English law as to the date of publication and the proprietor's name appearing on each print, but this case was prior to the Berne Convention.

(*k*) Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), s. 1. Compare the cases under stat. 8 Ann, c. 19 (*Power* v. *Walker* (1814), 6 M. & S. 7; *Davidson* v. *Bohn* (1848), 6 C. B. 456; *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815, *per* Lord ST. LEONARDS, at pp. 994, 995); and see p. 159, *ante*. For a form of agreement between the proprietor of copyright in a picture and an engraver, see Encyclopædia of Forms, Vol. V., p. 349.

(*l*) Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), s. 2.

In the event of such licensee selling the plates, however, the purchaser cannot reproduce the prints without the consent of the proprietor of the copyright (*m*).

A licence to copy engravings, as illustrations for a series of articles in a magazine, does not entitle the licensee to reproduce the engravings with the articles republished in a separate form (*n*).

SUB-SECT. 2.—*Infringement.*

Infringement.

469. It is an infringement of the copyright in a print to copy it in any manner, in the whole or in part, by varying, adding to, or diminishing from the main design (*o*), if the print is the author's own design or invention (*p*).

A print made from any picture, drawing, model, or sculpture, not designed or invented by the engraver, is only protected as regards that part of the work in the print which depends upon the engraver's art and skill (*q*).

So, where a print is made from a picture, not the work of the engraver, a reproduction of the subject in tapestry or Berlin wool, or upon a china plate, is not an infringement of the print (*r*); and a copy of the subject-matter of a print, painted in colours upon a canvas, on a large scale with dioramic effect, for public exhibition, is not an infringement of the print (*s*), though it is an infringement of the copyright in the picture from which the print was taken (*t*).

What amounts to a copy is in each case a question of fact (*a*); and the protection given to the engraver is intended not merely to prevent injury to his reputation (*b*), but also to secure to him the

(*m*) *Marshall & Co.* v. *Bull* (*A. H.*), *Ltd.* (1901), 85 L. T. 77, C. A.; *Cooper* v. *Stephens*, [1895] 1 Ch. 567.

(*n*) *Strahan* v. *Graham* (1867), 16 L. T. 87; affirmed 17 L. T. 457, C. A.; and see *London Printing Co.* v. *Cox*, [1891] 3 Ch. 291 (notice of licence to print in monochrome).

(*o*) Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), s. 1.

(*p*) The protection of the Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), which was only applicable to prints designed or invented by the engraver, was extended by the Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), to prints made from any picture, drawing, model, or sculpture; but the limitation mentioned *infra* must be read into the Acts (*Dicks* v. *Brooks* (1880), 15 Ch. D. 22, C. A., *per* BAGGALLAY, L.J., at pp. 34, 36).

(*q*) *Dicks* v. *Brooks*, *supra*. "The engraver, although a copyist, produces the resemblance by means very different from those employed by the painter or draughtsman from whom he copies The engraver produces his effects by the management of light and shade, or, as the term of his art expresses it, the *chiaro-oscuro*. The due degrees of light and shade are produced by different lines and dots; he who is the engraver must decide on the choice of the different lines and dots, and on his choice depends the success of his print. If he copies from another engraving, he may see how the person who engraved that, has produced the desired effect, and so without skill or attention become a successful rival" (*Newton* v. *Cowie* (1827), 4 Bing. 234, *per* BEST, C.J., at p. 245).

(*r*) *Dicks* v. *Brooks*, *supra*, *per* BAGGALLAY, L.J., at p. 36.

(*s*) *Martin* v. *Wright* (1833), 6 Sim. 297.

(*t*) The exhibition of such a work, without the consent of the proprietor of the copyright in the painting or drawing, would be an offence under the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 6.

(*a*) See pp. 196, 197, *ante*.

(*b*) *Dicks* v. *Brooks*, *supra*, *per* BRAMWELL, L.J., at p. 38; compare as to "paintings, drawings, and photographs," p. 196, *ante*.

SECT. 3. Prints, Engravings and Lithographs.

commercial value of his property by giving him a monopoly in the sale of his work (*c*).

It is not necessary that the copy should be an exact copy. If it is a colourable imitation of the print, or a copy of part of the print varying in some respects from the main design, it may be an infringement (*d*).

Copying any print by photography, lithography, or any other process, whether mechanical or otherwise, whereby a print is reproduced or imitated, may be an infringement of the copyright (*e*).

Remedies.

470. In respect of any infringement of copyright in a print the copyright proprietor is entitled to an action for damages, or an account of profits, forfeiture of plates and sheets, and an injunction, if further infringement is intended or threatened (*f*).

Action for damages.

471. An action for damages (*g*) may be brought by the proprietor of the copyright in any print, against any person who commits, or causes another to commit, without the express consent of such proprietor in writing duly signed and attested by two witnesses, any of the following infringements:—

(1) Engraving, etching, or working, or causing or procuring to be engraved, etched, or worked, in mezzotinto or chiaro-oscuro, or otherwise, any copy of such print, or in any manner copying the print in the whole or in part by varying, adding to, or diminishing from the main design;

(2) Printing, reprinting, or importing for sale any copy of such print (*h*);

(3) Publishing, selling, or otherwise disposing of, or causing or procuring to be published, sold, or otherwise disposed of (*i*), any copy of such print (*k*).

(*c*) *Gambart* v. *Ball* (1863), 14 C. B. (N. S.) 306, *per* ERLE, C.J., at pp. 315, 316; and see the cases cited in the notes on p. 196, *ante*.

(*d*) *West* v. *Francis* (1822), 5 B. & Ald. 737; *Roworth* v. *Wilkes* (1807), 1 Camp. 94; *Moore* v. *Clarke* (1842), 9 M. & W. 692; *Brooks* v. *Religious Tract Society*, [1897] W. N. 25.

(*e*) *Gambart* v. *Ball*, *supra*; *Graves* v. *Ashford* (1867), L. R. 2 C. P. 410, Ex. Ch.; *Dicks* v. *Brooks* (1880), 15 Ch. D. 22, C. A., *per* BRAMWELL, L.J., at p. 37; *Marshall & Co.* v. *Bull* (*A. H.*), *Ltd.* (1901), 85 L. T. 77, 81, C. A.

(*f*) See p. 165, *ante*.

(*g*) Prints Copyright Act, 1777 (17 Geo. 3, c. 57).

(*h*) *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

(*i*) A vendor who has no knowledge of the piracy is liable (*West* v. *Francis* (1822), 5 B. & Ald. 737; *Gambart* v. *Sumner* (1859), 5 H. & N. 5).

(*k*) The Prints Copyright Act, 1777 (17 Geo. 3, c. 57), gives an action for damages in respect of infringements of copyright in any print "engraved, etched, drawn, or designed in any part of Great Britain," and the provisions of this Act and of the earlier Engraving Acts are extended to Ireland by the Prints and Engravings Copyright (Ireland) Act, 1836 (6 & 7 Will. 4, c. 59), s. 1. By s. 2 of the latter Act an action for damages is also given in respect of infringements relating to any print "published" (*i.e.*, first published) in the United Kingdom. The author of a print first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886, is entitled to the same protection (Order in Council, December 2, 1887; see note (*i*), p. 141, *ante*.

Proceedings to recover penalties.

472. Any person (*l*), whether proprietor of the copyright or not, may bring an action in the High Court or take summary proceedings before the magistrates (*m*) to recover penalties against an offender who commits, or causes another to commit, as regards a copyright print, any of the following offences (*n*):—

(1) Engraving, etching, or working in mezzotinto or chiaro-oscuro;

(2) Copying (*o*) and selling;

(3) Printing, reprinting, or importing for sale;

(4) Knowingly publishing, selling, or exposing to sale, or otherwise, or in any manner disposing of, any print or part thereof, without the consent of the copyright proprietor in writing duly signed and attested (*p*).

The penalty recoverable in respect of such offences is five shillings for every print found in the offender's custody, either printed or published, and exposed for sale, or otherwise disposed of unlawfully (*q*). One half of the amount of the penalties recovered goes to the Crown, and the other half to the plaintiff or prosecutor in the action or summary proceedings (*r*).

All plates, and every sheet on which the print is copied, are forfeited to the proprietor of the copyright for the purpose of destruction (*s*).

The plaintiff, if successful, is entitled to costs between party and party, and such costs are not in the discretion of the court (*t*).

Conditions precedent to action etc.

473. It is a condition precedent to the recovery of penalties (*a*), or damages (*b*), for infringement of copyright in a print, that the statutory provision, requiring the date of publication and the proprietor's name to appear on each plate and print, shall have been complied with (*c*).

474. A collection of prints, engravings, or lithographs published in volume, with or without letterpress, is a book (*d*), and the

(*l*) A common informer (Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), s. 1; Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), s. 5).

(*m*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 8.

(*n*) Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), s. 1.

(*o*) As to the words "In any manner, in the whole, or in part, by varying, adding to, or diminishing from, the main design" (*ibid.*, s. 1), see note (*p*), p. 203, *ante*.

(*p*) As to licence, or consent in writing, see p. 202, *ante*.

(*q*) Engraving Copyright Act, 1734 (8 Geo. 2, c. 13), s. 1.

(*r*) *Ibid.*

(*s*) *Ibid.*

(*t*) Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), s. 5; *Avery* v. *Wood*, [1891] 3 Ch. 115, C. A.

(*a*) *Newton* v. *Cowie* (1827), 4 Bing. 234, 244; *Sayer* v. *Dicey* (1770), 3 Wils. 60.

(*b*) *Newton* v. *Cowie*, *supra*; *Brooks* v. *Cock* (1835), 3 Ad. & El. 138; *Harrison* v. *Hogg* (1794), 2 Ves. 323.

(*c*) As to whether this is necessary in the case of a print first published in one of the foreign countries of the union constituted by the Berne Convention, 1886, see note (*i*), p. 141, *ante*.

(*d*) *Davis* v. *Benjamin*, [1906] 2 Ch. 491; and see p. 142, *ante*. As to prints of any "map, chart, or plan," see pp. 144, 145, *ante*.

SECT. 3. Prints, Engravings and Lithographs.

proprietor of the copyright must be registered under the Copyright Act, 1842 (*e*), before he can sue for infringement (*f*); but the formalities as to prints (*g*) are not required in such a case (*h*).

Limitation of actions.

475. Any action or proceedings for the recovery of penalties, with respect to the infringement of the copyright in any print, must be brought within six calendar months from the date of such infringement (*i*). An action for damages is barred unless it is brought within six years after the cause of action arises (*k*).

SECT. 4.—*Sculpture, Models and Casts.*

Persons entitled to copyright.

476. The author, or his assignee, of an article of sculpture (*l*) which is first published in (1) the United Kingdom (*m*), or (2) any British possession (*n*), or (3) any one of the foreign countries of the union constituted by the Berne Convention, 1886 (*o*), is entitled to copyright in the United Kingdom, provided he complies with the necessary formalities and conditions (*p*).

The "author" of an article of sculpture is the person who makes any such work, or causes it to be made (*q*).

Definition of sculpture.

477. The expression "article of sculpture" means any new and original sculpture, model, copy, or cast of the human figure, or of any bust or of any part of the human figure, clothed in drapery or otherwise; or of any animal or of any part thereof combined with the human figure or otherwise; or of any subject being matter of invention in sculpture (*r*); or of any alto- or basso-relievo representing any of such matters or things; or any cast from nature of the human figure or of any animal, or of any part or parts of any human figure or animal; or of any subject containing or representing any of such matters or things, whether separate or combined (*s*).

(*e*) 5 & 6 Vict. c. 45.

(*f*) See note (*d*), p. 205, *ante*.

(*g*) See p. 201, *ante*.

(*h*) *Maple & Co.* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369, C. A.; *Grace* v. *Newman* (1875), L. R. 19 Eq. 623; *Bogue* v. *Houlston* (1852) 5 De G. & Sm. 267; *Marshall & Co.* v. *Bull (A. H.), Ltd.* (1901), 85 L. T. 77, C. A.; *Davis* v. *Benjamin*, [1906] 2 Ch. 491.

(*i*) Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), ss. 6, 8.

(*k*) Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3. The limitation of six months under the Engraving Copyright Act, 1766 (7 Geo. 3, c. 38), does not apply to an action for damages (*Graves* v. *Mercer* (1868), 16 W. R. 790). As to public authorities, see note (*l*), p. 169, *ante*.

(*l*) This term is used in the International Copyright Act, 1844 (7 & 8 Vict. c. 12), s. 19, as meaning the works protected under the Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 1; see *infra*.

(*m*) Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56); as to publication of an article of sculpture, see note (*a*), p. 207, *post*.

(*n*) See note (*g*), p. 189, *ante*.

(*o*) See p. 139, *ante*.

(*p*) See note (*i*), p. 141, *ante*; and p. 207, *post*.

(*q*) Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 1.

(*r*) *Caproni* v. *Alberti* (1891), 65 L. T. 785, where casts of fruit and leaves were protected.

(*s*) Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 1. Toy soldiers

478. The statutory period of copyright in such works commences on publication, and endures for fourteen years from the date of publication (*t*); but if the author is living at the expiration of such period he is entitled to a further term of copyright for fourteen years (*u*).

Requisites for copyright.

479. If the work is first published in any part of the British dominions, the name of the proprietor of the copyright, and the date of publication (*w*), must be put upon the work before it is published (*a*).

There is no registration of sculpture prescribed by English law.

If the work is first published in any one of the foreign countries of the union constituted by the Berne Convention, 1886, the formalities and conditions of that country must be complied with. It seems that in such a case the formalities and conditions prescribed by English law are not required (*b*).

Sale of copyright.

480. Any sale of the copyright in an article of sculpture should be by deed, signed by the proprietor of the copyright in the presence of, and attested by, two or more credible witnesses (*c*).

Condition precedent to recovery.

481. It is a condition precedent to the recovery of damages for infringement of copyright in an article of sculpture that the statutory provision, requiring the name of the proprietor and date

have been held to be within the category of articles of sculpture (*Britain* v. *Hanks Brothers & Co.* (1902), 86 L. T. 765).

(*t*) The expression used in the Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 1, is, "From the first putting forth or publishing the same"; see note (*a*), *infra*.

(*u*) *Ibid.*, s. 6; see p. 190, *ante*.

(*w*) "The date" is the expression used in the Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 1; but in the earlier Act (38 Geo. 3, c. 71), recited in the preamble, but now repealed by Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101), the "date of publication" is mentioned. The "date of publication" is referred to in this connection in the preamble of the International Copyright Act, 1844 (7 & 8 Vict. c. 12). The approximate date prior to actual publication has been held to be sufficient (*Britain* v. *Hanks Brothers & Co.*, *supra*).

(*a*) "Before the same shall be put forth or published" is the expression used in the Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 1. In the earlier Act (38 Geo. 3, c. 71) the words were "published or exposed to sale." What constitutes publication of an article of sculpture under the Act is by no means clear. The public exhibition or exposure for sale of an article of sculpture, however, amounts to publication (*Britain* v. *Hanks Brothers & Co.*, *supra* (placing article of sculpture in showroom for sale); *Turner* v. *Robinson* (1860), 10 I. Ch. R. 510, C. A. (exhibition of picture in public gallery)). A sale and delivery of the work, without any public exposure for sale, would perhaps be sufficient; see note (*k*), p. 189, *ante*.

(*b*) See note (*i*), p. 141, *ante*.

(*c*) Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 4. This section provides that no purchaser of any article of sculpture from the proprietor, under a deed executed in the presence of witnesses, shall be subject to an action for copying, or casting, or vending the same. It does not in terms preclude assignment by writing without a deed, but that appears to be the necessary inference; see title CONTRACT, Vol. VII., p. 360. For a form of assignment, see Encyclopædia of Forms, Vol. V., p. 330.

SECT. 4. Sculpture, Models and Casts.

of publication to appear upon the work, shall have been complied with (*d*).

Remedies.

482. The proprietor of the copyright in an article of sculpture is entitled to an action for damages against any person who, to the detriment, damage, or loss of such proprietor, makes, imports, or causes to be made, or imported, or exposed for sale (*e*), or otherwise disposed of, any pirated copy or cast, whether produced by moulding, or copying from, or imitating such work in any manner (*f*). An injunction also may be obtained if further infringement is threatened or intended (*g*).

The plaintiff, if successful, is entitled to party and party costs, and such costs are not in the discretion of the court (*h*).

Limitation of actions.

483. Such action must be brought within six calendar months after the discovery of the infringement (*i*).

(*d*) See the cases cited as to "prints" at p. 205, *ante*.

(*e*) Canvassing for orders and showing a pirated copy of a bust is not "exposing for sale," nor is it evidence against the canvasser of "making or causing it to be made" (*Britain* v. *Kennedy* (1902), 19 T. L. R. 122).

(*f*) Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 3. The protection given to the sculptor is to prevent any article of sculpture, in which he has copyright, from being copied or reproduced by similar means so as to compete with him in the market. To make a photograph or drawing from the work, although in a sense it is copying or reproducing, would not, it is submitted, amount to an infringement of the copyright. Compare as to "paintings, drawings, and photographs," p. 196, *ante*, and as to "prints," pp. 203 *et seq.*, *ante*.

(*g*) See pp. 165 *et seq.*, *ante*.

(*h*) "Double costs" under the Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 3, was changed to a "full and reasonable indemnity" by the Limitations of Actions and Costs Act, 1842 (5 & 6 Vict. c. 97), s. 2, and this appears to be equivalent to party and party costs (*Reeve* v. *Gibson*, [1891] 1 Q. B. 652, C. A.).

(*i*) Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56), s. 5.

CORNWALL, DUCHY OF.

See CONSTITUTIONAL LAW.

CORONERS.

PAGE

PART I. INTRODUCTORY - - - - - - - - - - 210

PART II. CLASSIFICATION OF CORONERS - - - - - 212

SECT. 1. THE VARIOUS KINDS OF CORONERS - - - - 212

SECT. 2. CORONERS BY VIRTUE OF THEIR OFFICE - - - 212

SECT. 3. COUNTY CORONERS - - - - - - - - 212

Sub-sect. 1. Division of Counties into Coroners' Districts - 212
Sub-sect. 2. Appointment - - - - - - - - 215
Sub-sect. 3. Qualification - - - - - - - - 218
Sub-sect. 4. Local Jurisdiction - - - - - - - 219
Sub-sect. 5. Salary and Fees - - - - - - - 222
Sub-sect. 6. Removal - - - - - - - - - 224

SECT. 4. BOROUGH CORONERS - - - - - - - - 225

Sub-sect. 1. Appointment - - - - - - - - 225
Sub-sect. 2. Qualification - - - - - - - - 226
Sub-sect. 3. Jurisdiction - - - - - - - - 226
Sub-sect. 4. Salary and Fees - - - - - - - 227
Sub-sect. 5. Removal - - - - - - - - - 228

SECT. 5. FRANCHISE CORONERS - - - - - - - - 228

Sub-sect. 1. Definition - - - - - - - - 228
Sub-sect. 2. King's Coroner and Attorney - - - - 229
Sub-sect. 3. Coroner of the King's Household - - - 230
Sub-sect. 4. Coroner of the Admiralty - - - - - 231
Sub-sect. 5. Other Franchise Coroners - - - - - 234

SECT. 6. DEPUTY CORONERS - - - - - - - - 236

PART III. DUTIES, PRIVILEGES AND LIABILITIES OF CORONERS - - - - - - - - - - 237

SECT. 1. DUTIES OF CORONERS - - - - - - - - 237

Sub-sect. 1. Introductory - - - - - - - - 237
Sub-sect. 2. Inquests *super visum corporis* - - - - 239
Sub-sect. 3. Inquests on Treasure Trove - - - - 247
Sub-sect. 4. To act in place of Sheriff - - - - - 248
Sub-sect. 5. To pronounce Judgment in Outlawry - - 250

SECT. 2. PRIVILEGES OF CORONERS - - - - - - - 250

SECT. 3. LIABILITIES OF CORONERS - - - - - - - 251

Sub-sect. 1. Removal etc. for Misbehaviour or Inability - 251
Sub-sect. 2. Imposition of Fine or Costs on Coroner - - 255
Sub-sect. 3. Not to act as Solicitor and Coroner in same Case 255
Sub-sect. 4. Penalties under Special Statutes - - - 256
Sub-sect. 5. For Acts in Excess of Jurisdiction - - - 256

PAGE

PART. IV. INQUESTS 256

SECT. 1. PROCEEDINGS AT INQUESTS 256

Sub-sect. 1. Where and when to be held 256
Sub-sect. 2. Who may attend 258
Sub-sect. 3. The Jury 259
Sub-sect. 4. View of the Body 263
Sub-sect. 5. Witnesses and Evidence 264
Sub-sect. 6. Medical Witnesses and Post-mortem Examinations 268
Sub-sect. 7. Adjournment 270
Sub-sect. 8. Verdict of Jury 270
Sub-sect. 9. Coroner's Certificate and Order for Burial . . 271

SECT. 2. THE INQUISITION 273

Sub-sect. 1. Form and Requisites 273
Sub-sect. 2. Custody and Filing 279
Sub-sect. 3. Traverse of Inquisition 279
Sub-sect. 4. Amendment 280
Sub-sect. 5. Quashing Inquisition and New Inquest . . 283
Sub-sect. 6. Proceedings upon Inquisition charging Murder or Manslaughter 288

SECT. 3. EXPENSES AND RETURNS OF INQUESTS 293

Sub-sect. 1. Schedule of Fees and Allowances . . . 293
Sub-sect. 2. Fees of Medical Witnesses 293
Sub-sect. 3. Payment of Expenses by and to Coroner . . 294
Sub-sect. 4. Detached Parts of Counties 295
Sub-sect. 5. Returns by Borough Coroners 296

PART V. INQUESTS ON FIRES IN THE CITY OF LONDON . 296

For Murder and Manslaughter - *See title* CRIMINAL LAW AND PROCEDURE.

Part I.—Introductory.

History of the office.

484. The office of coroner is of great antiquity, and no satisfactory account of its origin can be given. It is said to have existed in the time of the Anglo-Saxon Kings, but the authority for this statement is doubtful (*a*). The right to elect a coroner for

(*a*) 2 Co. Inst., 31, cites the Mirror of Justice, Book 1, c. 3, where, under the heading "Of the Original Constitutions," it is stated that King Alfred caused his earls to assemble in Parliament twice a year, and under that statute divers ordinances were made by divers Kings down to the present time (Edward I.), and "auxi ordains fuer coroners in chescun county et viscounts a garder le peace quant les counteos soy demisterent del gard"; and the various powers and duties of coroners are thereafter set out. The institution of the office of coroner is thus made to appear contemporaneous with that of sheriff, which is known to have existed in Anglo-Saxon times. The worthlessness of the Mirror, however, as evidence of the jurisprudence of Anglo-Saxon times is now generally acknowledged (see Selden Society's Publications, Vol. VII., introduction to Mirror of Justice). In the rhyming charter said to have been granted by Athelstan to

London appears to have been granted to the citizens by Henry I. (*b*). In 1194 the justices of eyre were directed to see that in every county should be chosen three knights and a clerk as custodians of the pleas of the Crown (*c*). The office may therefore be safely assumed to have existed at least as early as the beginning of the thirteenth century, and there is other evidence to show that officers having powers similar to those of coroners were in existence before that date (*d*).

It is to be noticed that while the officer whom the citizens of London were empowered to elect under the charter of Henry I. was to hold pleas of the Crown as well as to keep the records, the officers whom the justices were to see appointed in each county were only to keep the pleas. And this curtailment in the duties of the office was confirmed by the provision of Magna Carta (*e*) that "no sheriff, constable, escheator, coroner, nor any of our bailiffs shall hold pleas of our Crown."

Origin of the name.

485. The name of coroner is to be attributed to the duties exercised by that officer with regard to the pleas of the Crown, and the names "*custodes placitorum coronæ*," "*coronatores*," and "*coronarii*" are in early times used interchangeably (*f*).

Coroner's court a court of record.

The coroner's court is a court of record (*g*).

St. John of Beverley there is an allusion to the coroner (Dugdale, Monasticon Anglicanum 2, 130), but this charter is probably apocryphal. In 6 Vin. Abr., p. 242, a statement is adopted from Nath. Bacon's treatise "Of Government," c. 32, s. 2, where it is said: "It is evident he (the coroner) was an officer in Alfred's time, for that King put a judge to death for sentencing one to suffer death upon the coroner's record without allowing the delinquent liberty of traverse." The authority given by Bacon for this statement is again the Mirror, Book 5, c. 1, where the case is thus stated: "Culling was taken and tortured until he confessed a mortal sin, and this he did to be quit of further torture, and Osketel judged him to death on his confession made to the coroner, without trying the truth of the allegation as to the torture, and the other facts. And besides this the coroners, officers, and assessors, and those who tortured folk, and those who could have disturbed the false judgments, but did not do so, were hanged whenever the justices were hanged" (Selden Society's Publications, Vol. VII., Mirror of Justice, p. 169).

(*b*) The charter of Henry I. to the citizens of London grants "justitiarium qualem voluerint de seipsis ad custodiendum placita coronæ meæ et eadem placitanda."

(*c*) Stubbs, Select Charters, 8th ed., p. 260, c. 20: "Præterea in quolibet comitatu eligantur tres milites et unus clericus custodes placitorum coronæ."

(*d*) Selden Society's Publications, Vol. IX., Select Coroners' Rolls, p. xv. A grant was made by Richard I. to the burgesses of Colchester "quod ipsi ponant de seipsis justit[iarium] ad servandum placita coronæ nostræ et ad placitandum eadem placita infra burgum suum." In the Assize Rolls, 39 Hen 3, the burgesses present to the justices in eyre that they ought to appoint from their own burgesses "coronatores ad inquisiciones faciendas de morte hominis et omnimoda attachiamenta coronæ facienda sine presentia justic. qui sacramenta eorundem capiant vel vicecomitis vel alicujus alius ex parte domini regis, et dicunt quod hoc faciunt ex concessu Ricardi regis avunculi dom. regis nunc" (*ibid.*, p. xxxvii.).

(*e*) Cap. 24.

(*f*) Selden Society's Publications, Vol. IX., Select Coroners' Rolls, p. xvi., n.

(*g*) 4 Co. Inst. 271; Com. Dig. tit. Officer, G, 5; *Garnett* v. *Ferrand* (1827), 6 B. & C. 611, *per* Lord TENTERDEN, C.J., at p. 625; but see the doubt expressed in *Jewison* v. *Dyson* (1842), 9 M. & W. 540, *per* Lord ABINGER, at p. 586.

Part II.—Classification of Coroners.

SECT. 1.

The Various Kinds of Coroners.

SECT. 1.—*The Various Kinds of Coroners.*

Classification of coroners.

486. Coroners are of three kinds: (1) those who are so by virtue of their office; (2) county and borough coroners, who are respectively appointed by county and borough councils: (3) franchise coroners, who are appointed by letters patent or under or by virtue of a royal grant or charter.

The King's coroner and attorney does not fall strictly within any one of these groups, but is akin to a franchise coroner, and his office will be described under that heading (*h*).

SECT. 2.—*Coroners by Virtue of their Office.*

Coroners *ex officio.*

487. Those who are coroners by virtue of their office are the Lord Chief Justice of England, who is supreme coroner for England (*i*), and all the judges of the High Court of Justice, who also are sovereign coroners for the whole of England (*j*). Nothing in the Coroners Act, 1887 (*k*), is to prejudice the jurisdiction of a judge exercising the jurisdiction of a coroner by virtue of his office, and such judge may, notwithstanding the passing of that Act, exercise any jurisdiction, statutable or otherwise, previously exercisable by him in the same manner as if that Act had not passed (*l*).

SECT. 3.—*County Coroners.*

SUB-SECT. 1.—*Division of Counties into Coroners' Districts.*

Meaning of "county."

488. For the purpose of the division of counties into coroners' districts, the alteration of and the assignment of coroners to such divisions, the expression "county," as hereinafter used, means any county, riding, or division of a county in and for which a separate coroner had been customarily elected before the passing of the Coroners Act, 1844 (*m*).

The several ridings of Yorkshire and divisions of Lincolnshire are separate counties for all purposes of the Coroners Acts, including division into districts (*n*). A ward in the county of

(*h*) See pp. 229, *et seq.*, *post.*

(*i*) 2 Hale, P. C. 53; *Sadlers' Case* (1587), 4 Co. Rep. 54 b, 57 b; *Barclee's Case* (1658), 2 Sid. 101, *per* GLYN, C.J.: "It seems that I can hold an inquest in any place in the kingdom. For every Chief Justice is chief coroner of all England."

(*j*) 4 Co. Inst. 73. Before the Judicature Act, 1873 (36 & 37 Vict. c. 66), the judges of the King's Bench alone exercised or had a coroner's jurisdiction, but such jurisdiction was extended to and became exercisable by all the judges of the High Court by virtue of s. 12 of that Act.

(*k*) 50 & 51 Vict. c. 71.

(*l*) *Ibid.*, s. 34.

(*m*) 7 & 8 Vict. c. 92, s. 28. This Act was passed on the 9th August, 1844. It is specially provided by s. 43 of the Coroners Act, 1887 (50 & 51 Vict. c. 71), that nothing in that Act is to affect the law respecting the division of a county into districts, or the rights and duties of coroners as respects such districts.

(*n*) Yorkshire Coroners Act, 1897 (60 & 61 Vict. c. 39); Lincolnshire Coroners Act, 1899 (62 & 63 Vict. c. 48).

Durham is to be deemed a coroner's district in that county (*o*). Subject to these qualifications, all statutory provisions as to the division of a county into coroners' districts apply to all counties in England and Wales, including the counties of Cheshire, Durham, and the Isle of Ely (*o*).

County of London.

The county of London is now divided into eight coroners' districts lying wholly within the county, but these districts do not include any places (such as the City, the liberty of the Tower, the borough of Southwark etc.) which prior to the 1st April, 1889, were exempt from the jurisdiction of any county coroners (*p*).

Places excluded.

489. None of the following provisions touching the division of counties into districts extend to any city, borough, town, liberty, franchise, part, or place the appointment or election of coroner whereof takes place by law otherwise than under the writ *de coronatore eligendo* (*q*). A liberty or franchise cannot, therefore, be made into a county district (*r*).

(*o*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 38.

(*p*) The arrangement by which the coroners' districts which were within, or partly within and partly without, the county of London at the passing of the Local Government Act, 1888 (51 & 52 Vict. c. 41), were altered so as to be wholly within the county was made in pursuance of s. 114 (2) of that Act, and at the same time the county was divided into eight districts by Order in Council, August 25, 1892, published in the *London Gazette*, September 6, 1892, as amended by Order in Council, May 28, 1894, published in the *London Gazette*, June 1, 1894. The several districts comprise the following parishes and places:—

Eastern Coroner's District.—The parishes of Bromley St. Leonards; St. Anne, Limehouse; All Saints, Poplar; St. Mary, Stratford-le-Bow; St. Paul, Shadwell; St. John, Wapping; St. Botolph Without, Aldgate; Christ Church, Spitalfields. The parts of the parishes of St. George in the East and St. Mary, Whitechapel, which lie within the county of London. The hamlets of Mile End Old Town, Mile End New Town, Ratcliff. The precinct of St. Katherine. The liberty of Norton Folgate.

North-Eastern Coroner's District.—The parishes of St. Matthew, Bethnal Green; St. John at Hackney; St. Luke; St. Leonard, Shoreditch; St. Mary, Stoke Newington.

Central Coroner's District.—The parishes of St. Giles-in-the-Fields and St. George, Bloomsbury; St. Pancras; St. John, Hampstead; St. Marylebone; Paddington; St. Sepulchre; Clerkenwell; Islington; St. George the Martyr. That part of the parish of St. Andrew, Holborn, which lies above the Bars. The liberties of the Rolls; Glasshouse Yard; Saffron Hill, Hatton Garden, Ely Rents and Ely Place. The extra-parochial places Lincoln's Inn; Gray's Inn; Staple Inn; Charterhouse; Furnival's Inn (such part as is outside the City of London).

Western Coroner's District.—The parishes of Kensington; Chelsea; Fulham; Hammersmith.

Penge Coroner's District.—The hamlet of Penge.

Southern Coroner's District.—Hatcham. The parishes of Camberwell; Streatham; Christchurch; Newington; St. Saviour's, including the Clink Liberty, but excluding the portion within the borough of Southwark; Lambeth, so much as lies to the south and south-east of the centre of the Clapham and Kennington Park Roads.

South-Western Coroner's District.—The parishes of Battersea; Putney; Tooting; Wandsworth; Lambeth, so much as lies to the north and north-west of the centre of the Clapham and Kennington Park Roads.

South-Eastern Coroner's District.—Greenwich; Charlton (S.E.); Woolwich; Plumstead; Lewisham; Eltham; Lee; Kidbrooke; Rotherhithe; Bermondsey. The parishes of St. Paul, Deptford; St. Nicholas, Deptford.

(*q*) Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 27.

(*r*) *Ex parte Payne* (1862), 6 L. T. 536, where it was held that the coroner

SECT. 3. County Coroners.

Petition for creation of coroner's districts.

490. Whenever the county council of any county deems it expedient that the county should be divided into two or more districts for the exercise of the duties of coroners, or that alteration should be made of any such division theretofore made, the council may resolve that a petition be presented to His Majesty praying that such division or alteration be made, and then adjourn the further consideration of the petition until notice thereof has been given to the coroner or coroners of such county (*s*).

The clerk of the county council must give notice of any such resolution to every coroner for such county, and of the time when the petition will be taken into consideration by the county council, and the council must confer with every such coroner who may attend the meeting of the council for that purpose, having due regard to the petition, the size and nature of each proposed district, the number of the inhabitants, the nature of their employments, and such other circumstances as may appear fit to the council to be considered in carrying into execution such division or alteration. The petition, when agreed to, with a description of the several proposed districts and of the boundaries thereof, and the reasons upon which the petition is founded, must be certified to His Majesty under the seal of the council, and a copy of the petition must be given or sent by the clerk of the council, certified by him, to every coroner for the county (*t*).

Order in Council.

491. The King in Council, after consideration of such petition and of any petition presented by any coroner of the county concerning the proposed division or alteration, or whenever it may seem fit to the King to direct the issue of a writ *de coronatore eligendo* for the purpose of authorising the election of an additional coroner above the number customarily elected in such county, may order that the county be divided into as many districts for the said purposes as to the King, with the advice of the Privy Council, may appear expedient, and may give a name to each of such districts. Every such order must be published in the *London Gazette* (*a*).

An Order in Council with respect to coroners' districts in the county of Lancaster can only be made on the recommendation of the Chancellor and Council of the Duchy of Lancaster (*b*).

Assignment of districts to coroners.

492. When a county is divided into districts the county council must assign one of such districts to each of the persons holding the office of coroner in the county, and upon the death, resignation, or

for such part of the Duchy of Lancaster as was within the county of Middlesex, being appointed by letters patent, was not entitled to be appointed coroner of one of the districts of the county; compare *Jewison* v. *Dyson* (1842), 9 M. & W. 540.

(*s*) Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 2, as altered by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xi.), by which the business of justices in quarter sessions in respect of (*inter alia*) the division of a county into coroners' districts and the assignment of such districts was transferred to the county council.

(*t*) *Ibid.*, s. 3.

(*a*) *Ibid.*, s. 4.

(*b*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 39 (2).

removal of any such person, each of his successors, and also every other person thereafter elected to the office of coroner in the county, must exercise the office according to the provisions of the Acts relating to coroners (*c*).

Provision for districts existing in 1844.

493. Whenever it appears to the King in Council and is set forth in an Order in Council that any county has been customarily divided into districts for the purpose of holding inquests for seven years before the passing of the Coroners Act, 1844 (*d*), and it seems expedient to the King in Council that the same division of the county be made under that Act, each of such districts is to be assigned to the coroner usually acting in and for the same district before the passing of that Act; but if it appear expedient to the King in Council that a different division of such county be made, and any such coroner present a petition to His Majesty, praying for compensation to him for the loss of his emoluments arising out of such change, the King in Council may order the Treasury to assess the amount of compensation which may appear to the Treasury ought to be awarded to such coroner, and such amount must be paid by the treasurer of the county to such coroner, or his personal representatives, out of the county rate (*e*).

SUB-SECT. 2.—*Appointment.*

Procedure.

494. Formerly, on any vacancy occurring in the office of a coroner for a county, the writ *de coronatore eligendo* was directed to the sheriff of the county, who held an election, and the coroner was elected by the freeholders of the county. This system is now abolished (*f*), and on any vacancy occurring in the office of a coroner for a county, who is elected to that office in pursuance of a writ *de coronatore eligendo* (*g*), a like writ for the election of a successor is to be directed to the county council of the county (*h*).

Application to Lord Chancellor.

When there is a vacancy in the office of county coroner an

(*c*) Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 5, as altered by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xi.); see note (*s*), *supra*. The statutory provisions here specially referred to are those contained in ss. 19 and 20 of the Act of 1844, all other sections of that Act regulating the exercise of the office being now repealed. As to the duty of the coroner to reside within or near his district, see p. 219, *post*.

(*d*) 7 & 8 Vict. c. 92, passed on the 9th August, 1844.

(*e*) Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 6, expressly saved from repeal by Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 45, and Sched. III. The provision as to compensation applies only to cases in which a county was customarily divided into districts for seven years before the Act, and a different division is effected by Order in Council under the Act (*R.* v. *Lechmere* (1851), 16 Q. B. 284).

(*f*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (6), which repeals ss. 11, 14, and the First Schedule of the Coroners Act, 1887 (50 & 51 Vict. c. 71), and every other enactment relating to the election of a county coroner by the freeholders of the county, without prejudice to anything previously done or suffered thereunder.

(*g*) This provision does not apply to the coroners of a liberty or other franchise (*Re Local Government Act*, 1888, *Ex parte London County Council*, [1892] 1 Q. B. 33), but only to such coroners as were formerly elected by the freeholders of the county.

(*h*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (1).

SECT. 3. County Coroners.

application should be addressed to the Lord Chancellor by the council of the county in which the vacancy has occurred, praying the Lord Chancellor to issue to the council a writ *de coronatore eligendo*. If the vacancy has been caused by death, the application should be accompanied by a statutory declaration verifying a certificate of the death of the late coroner. When the vacancy is due to the resignation of the holder of the office, the resignation is made to the Lord Chancellor, but is sent by the retiring coroner to the county council, and the document is forwarded by the council to the Lord Chancellor with a request to issue the writ. When a coroner is removed by the Lord Chancellor (*i*) the writ *de coronatore eligendo* accompanies the writ *de coronatore exonerando* which orders his removal.

County of Lancaster.

In the county of Lancaster the application for the writ is to be made to the Chancellor of the Duchy, and the writ will be issued by such persons and in such manner as the Chancellor and the Council of the Duchy from time to time direct (*k*).

Writ *de coronatore eligendo.*

The writ *de coronatore eligendo* is an old form, now modified to give effect to the provisions of the Local Government Act, 1888, relating to the appointment of county coroners (*l*).

Appointment by county council.

495. On receipt of the writ it is the duty of the county council of the county thereupon to appoint a fit person, not being a county alderman or county councillor, to fill such office, and in the case of a county divided into coroners' districts to assign him a district; and any person so appointed has like powers and duties, and is entitled to like remuneration, as if he had been elected coroner for the county by the freeholders thereof (*m*).

(*i*) As to the removal of a coroner, see p. 224, *post*.

(*k*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 39 (1).

(*l*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (5). The form is to the following effect:—"Edward etc. To the County Council for the County of Greeting. Forasmuch as Esquire late our Coroner for the district of in your county is deceased [*or* has resigned that office] [*or* is so much occupied in doing our divers businesses in your county that he hath not leisure to exercise those things which belong to the office of Coroner in the same county, as we certainly understand, we have removed him from that office] [*or* is so infirm and broken with age, as we are informed from worthy testimony, that he is not able to exercise those things which belong to the office of coroner in the same county, we have commanded him the said to be removed from that office etc. *as the case may be*]. We command you that if it be so you appoint another Coroner for your said county in the place of the said , who having made his declaration as the manner is, may thereupon do and keep those things which concern the office of Coroner in the said county. And you shall cause such a one to be appointed not being a county alderman or county councillor for the said county as best knoweth and intendeth that office and certify unto us his name. Witness etc. . . ." (see Fitz. Nat. Brev. 163).

The old form ran "who having taken the oath," but by s. 78 (2) of the Local Government Act, 1888, a county council is not authorised to administer an oath, and the substituted form of declaration is prescribed in Sched. II. of the Coroners Act, 1887 (50 & 51 Vict. c. 71), as follows:—"I solemnly, sincerely and truly affirm that I will well and truly serve our Sovereign Lord the King and his liege people in the office of coroner for this county of and that I will diligently and truly do everything appertaining to my office after the best of my power for the doing of right, and for the good of the inhabitants within the said county."

(*m*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (1).

A county council may, however, postpone the appointment of a coroner to fill a vacancy, either generally or in any particular case, for the period of three months from the date at which the vacancy occurred (*n*).

Joint committee.

Where the district of a county coroner is situate wholly within an administrative county the appointment of that coroner is made by the council of that county (*o*). But where the district of any such coroner is situate partly in one and partly in another administrative county, forming part of an entire county, the joint committee for the entire county makes the appointment, and the amount payable in respect of the salary, fees, and expenses of such coroner is to be defrayed in like manner as costs of the joint committee are directed by the Local Government Act, 1888 (*p*), to be defrayed (*q*). The joint committee may, however, arrange as by law provided (*r*) for the alteration of the district so that on the next avoidance of the office of coroner of that district, or at any earlier time fixed by the joint committee when the alteration is made, the coroner's district shall not be situate in more than one administrative county (*s*).

Yorkshire and Lincolnshire.

496. For the purposes of all Acts relating to coroners the several ridings of Yorkshire and the several divisions of Lincolnshire are respectively made separate counties, and the county council of each riding and of each division is, to the exclusion of any other authority, the local authority for all such purposes (*a*). This, however, does not affect the power of the respective joint committees for the entire counties of Yorkshire and Lincolnshire to petition His Majesty in Council for an alteration of the district of any coroner which in 1897 and 1899 respectively was situate partly in one riding or division and partly in another riding or division. Nor does it affect the rights, duties, powers, and liabilities of any county coroner holding office in Yorkshire on the 6th August, 1897, or in Lincolnshire on the 9th August, 1899 (*a*).

Divisions of county.

Apart from these special provisions as to the counties of Yorkshire and Lincolnshire, the expression "county" whenever used in the Coroners Act, 1887, unless there is something inconsistent in the context, does not include a county of a city or a town, but includes any division or liberty of a county which has a separate

(*n*) Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 1 (6). This provision gets rid of the difficulty raised by the decision in *Re Coronership of Salop* (1849), 1 Mac. & G. 377, where it was held that execution of the writ could not be stayed until after a meeting of the justices in quarter sessions at which it was suggested that the justices intended to propose a division of the county.

(*o*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (2). An "administrative county" means the area for which a county council is elected in pursuance of the Act, but does not include a county borough; and an "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties (*ibid.*, s. 100); see, generally, title LOCAL GOVERNMENT.

(*p*) *Ibid.*, s. 46, as to the joint committee and their expenses.

(*q*) *Ibid.*, s. 5 (3), (4).

(*r*) That is by petition to His Majesty in Council under the Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 2; see p. 214, *ante*.

(*s*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (3).

(*a*) Yorkshire Coroners Act, 1897 (60 & 61 Vict. c. 39); Lincolnshire Coroners Act, 1899 (62 & 63 Vict. c. 48); and see p. 212, *ante*.

SECT. 3. County Coroners.

court of quarter sessions for which a separate coroner has customarily been elected (*b*).

Wales, Durham, Chester and Isle of Ely.

The counties in Wales and the counties of Durham and Chester and the liberty of the Isle of Ely are (with the exception of the under-mentioned provision as to the county of Durham) for the purpose of all Acts relating to coroners subject to the same provisions as the other counties in England, and the coroners of such counties have the same jurisdiction as other coroners in England. In the county of Durham, however, a ward of the county is, for the purpose of the provisions of any Act relating to coroners, to be deemed a coroner's district in that county (*c*).

County borough.

497. Where the district of any county coroner is wholly situate within a county borough which has not a separate court of quarter sessions the writ *de coronatore eligendo* may be issued to the council of that borough instead of to the county council, and the coroner for that district will be appointed by the council for the borough (*d*).

Where the district of a county coroner is situate partly within and partly without such county borough, the writ for the election of such coroner must be issued to the county council of the county. If the council of the county borough so require, a joint committee must from time to time be appointed for the purposes of coroners, consisting of such number of members of the county and borough councils as may be agreed upon, or in default of agreement as may be determined by a Secretary of State, and in the event of such joint committee being appointed the question of the person to be elected must be referred to that joint committee, and the county council must appoint the person recommended by the majority of such committee. If there is no such joint committee the appointment will be made by the county council alone (*e*).

In a borough having a separate court of quarter sessions the coroner is appointed by the borough council under the Municipal Corporations Act, 1882 (*f*).

SUB-SECT. 3.—*Qualification.*

Qualification.

498. A county coroner must be a fit person, having land in fee sufficient in the county whereof he may answer to all manner of

(*b*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 38. Unless, however, the division or liberty of a county, which is here recognised as a "county," has a separate county council, the appointment of a coroner for such division or liberty will be made by the county council for the entire county under the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (1); see p. 215, *ante*.

(*c*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 38. The coroners for the county of Durham were formerly appointed by the Bishops of Durham as Counts Palatine, but by stat. 7 Will. 4 & 1 Vict. c. 64 it was enacted that they should in future be elected by the freeholders, as in other counties. The appointment of coroners for the County Palatine of Cheshire was regulated by stat. 33 Hen. 8, c. 13, and 3 Vict. c. 87, until those Acts were repealed by the County Coroners Act, 1860 (23 & 24 Vict. c. 116), s. 7, by which the coroners were made subject to the general law affecting their office and duties. The coroners for the Isle of Ely were appointed by the Bishops of Ely as Lords Paramount of the County Palatine until the Liberties Act, 1836 (6 & 7 Will. 4, c. 87), by which the appointment was transferred to the freeholders of the county.

(*d*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 34 (4).

(*e*) *Ibid.*, s. 34 (4), (5).

(*f*) 45 & 46 Vict. c. 50, s. 171; see p. 225, *post*.

people (*g*). No particular amount of land is required, but as the qualification is a statutory one, the appointment of a person having no land in fee to be coroner for a county would be liable to be disallowed either by the Lord Chancellor as not being in obedience to the writ *de coronatore eligendo*, or by the King's Bench Division on *quo warranto* (*h*).

Membership of the county council.

A person who is a county alderman or county councillor may not be appointed a county coroner (*i*), and a county coroner is not qualified to be elected as a county alderman or county councillor for the county for which he is coroner (*k*).

The office of coroner is not incompatible with that of justice of the peace (*l*); and it is said that by the common law all county coroners are justices of the peace (*m*).

Place of residence.

A county coroner appointed to a district of a county must reside within the district for which he is appointed, or in some place wholly or partly surrounded by such district, or not more than two miles beyond the outer boundary of such district (*n*).

SUB-SECT. 4.—*Local Jurisdiction.*

Extent of jurisdiction.

499. The local jurisdiction of a county coroner is confined strictly within the county for which he is appointed coroner. When such county is divided into districts and the coroner is assigned to one of such districts (*o*), his jurisdiction, subject to the exceptions hereinafter appearing, is limited to the district to which he is assigned. And, conversely, that coroner only within whose

(*g*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 12; compare *Re Nottingham Coroner* (*Election*) (1828), 7 L. J. (o. s.) (CH.) 61. Originally coroners were appointed from the "milites" or persons of the degree of knights. The justices in eyre were directed to see that three knights and a clerk were chosen in every county as coroners (Stubbs, Select Charters, 8th ed., p. 260). In the Statute of Merton, 1236 (20 Hen. 3, c. 3), it appears to be assumed that all coroners were knights, and by the Statute of Westminster I., 1275 (3 Edw. 1, c. 10), it was directed that coroners should be chosen from the class of knights. This practice, however, soon fell into disuse, and in 1354 the statute 28 Edw. 3, c. 6, directed that coroners should be chosen of "the most meet and lawful people that shall be found in the said counties to execute the said office." A property qualification was established by the statute 14 Edw. 3, st. 1, c. 8 (1340), which enacted "that no coroner be chosen unless he have land in fee sufficient in the same county whereof he may answer to all manner of people." And this qualification, as appears in the text, is continued by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 12, by which all the other statutory provisions cited in this note are repealed. According to Lord COKE, a coroner should have five qualifications: He should be *probus homo; legalis homo;* of sufficient knowledge and understanding; of good ability and power to execute his office according to his knowledge; and, lastly, of diligence and attendance for the due execution of his office. And this for three purposes: (1) The law presumes that he will do his duty, and not offend the law, at least for fear of punishment, whereunto his lands and goods are subject; (2) that he be able to answer the King all such fines and duties as belong to him, and to discharge the country thereof; and (3) that he may execute his office without bribery (2 Co. Inst. 174).

(*h*) As to proceedings on *quo warranto*, see title CROWN PRACTICE.

(*i*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (1).

(*k*) *Ibid.*, s. 5 (7).

(*l*) *Davis* v. *Pembrokeshire Justices* (1881), 7 Q. B. D. 513.

(*m*) See p. 251, *post.*

(*n*) Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 5; compare *Re Nottingham County Coroner* (*Election*) (1828), 7 L. J. (o. s.) (CH.) 61.

(*o*) As to the division of a county into coroners' districts, see p. 212, *ante.*

SECT. 3. County Coroners.

jurisdiction the body of a person upon whose death an inquest ought to be holden is lying may hold the inquest (*p*). It is immaterial for this purpose where the cause of death arose or where the death occurred; whenever an inquest ought to be held it is sufficient to give the coroner jurisdiction to hold such inquest that the body should be lying within the area of his jurisdiction (*q*).

Jurisdiction within boroughs.

500. The jurisdiction of a county coroner extends to every borough (*r*) within his county or district, as the case may be, which has not a separate court of quarter sessions, or, having a separate court of quarter sessions, had a population of less than ten thousand according to the census of 1881 (*s*), unless such borough is within the jurisdiction of a franchise coroner. In a borough which is not within the jurisdiction of a franchise coroner and has not a separate court of quarter sessions, or, having a separate court of quarter sessions, had a population of less than ten thousand according to the census of 1881 (*s*), no coroner may hold an inquest belonging to the office of coroner except a coroner for the county or a coroner or deputy coroner for the jurisdiction of the Admiralty of England (*t*).

Detached part of county.

501. For the purpose of holding coroners' inquests every detached part of a county is to be deemed to be within the county by which it is wholly surrounded, or, where it is partly surrounded

(*p*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7 (1). As to the concurrent jurisdiction of deputy coroners for the Admiralty, see p. 233, *post*.

(*q*) *Ibid.*, s. 3 (1). The repealed statute 6 & 7 Vict. c. 12, s. 1, specially provided that the coroner within whose jurisdiction a body was lying should hold the inquest "notwithstanding that the cause of death did not arise within the jurisdiction of such coroner." And a similar condition must be taken as implied in ss. 3 (1), 7 (1) of the Coroners Act, 1887 (50 & 51 Vict. c. 71). At common law, if a man had been stricken in one county and died in another, it was doubtful whether the wrong-doer were indictable or triable in either, but the more common opinion was that he might be indicted where the stroke was given, for the death is but a consequent, and might be found though in another county. And if the party died in another county, the body was removed into the county where the stroke was given for the coroner to take an inquest *super visum corporis* (1 Hale, P. C. 426). And therefore in ancient times, if a man were hurt in the county of A. and died in the county of B., the coroner of the county of B. could not take an inquisition of his death because the stroke was not given in that county, nor could the coroner of the county of A. take an inquisition because the body was in the county of B., but the body used to be removed into the county of A., and there the coroner of that county could take the inquisition (2 Hale, P. C. 66). This was the law until the statute 2 & 3 Edw. 6, c. 24, repealed by Criminal Law Act, 1826 (7 Geo. 4, c. 64), which provided that in cases of murder or manslaughter the coroner of the county where the party died should inquire and proceed as if the stroke had been in the same county when the party died, but in cases of death *per infortunium* the common law remained in force until the above-mentioned statute, 6 & 7 Vict. c. 12, s. 1; see *R.* v. *Great Western Rail. Co.* (1842), 3 Q. B. 333.

(*r*) For the jurisdiction of a county coroner to hold inquests on the bodies of prisoners dying in a county prison situate within a borough which has its own coroner, see p. 241, *post*.

(*s*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 38; see title LOCAL GOVERNMENT.

(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), ss. 7 (3), 42. For the appointment of a coroner to exercise jurisdiction in a county borough having no separate court of quarter sessions, see p. 218, *ante*. Such coroner is a county coroner.

by two or more counties, within the county with which it has the longest common boundary (*u*).

When coroner may act outside his district.

502. Every coroner for a county or a district of a county, or his deputy, after he has been assigned to any particular district, may hold inquests only within the district to or for which he has been assigned, except during illness or incapacity or unavoidable absence of any coroner for any other district, or during a vacancy in the office of coroner for any other district (*w*). Subject, however, to this restriction, a county coroner, although he may be designated as the coroner for any particular district of a county, is for all purposes to be considered as a coroner for the whole county, and has the same jurisdiction, rights, powers, and authorities throughout the county as if he had been elected one of the coroners of the county (*a*).

If a coroner, by himself or deputy, should, in any such case of illness etc. above specified, hold an inquest in any district other than his own, he must, in the inquisition to be returned on such inquest, certify the cause of his attendance and holding such inquest. Such certificate is conclusive evidence of the illness or incapacity or unavoidable absence of the coroner in whose stead he attended, or of there being a vacancy in the office of coroner for the district in which the inquest was holden (*b*).

The verge.

503. A county coroner has no jurisdiction within the verge; the exclusive jurisdiction within such limits is vested in the coroner of the King's Household (*c*).

High seas.

504. A county coroner has no jurisdiction in matters arising upon the high seas, such matters being within the conusance of the coroner of the Admiralty (*d*), and the county coroner having no power to execute his office outside his county (*e*).

Where, however, a body is found dead in the sea, or in any creek, river, or navigable canal within the flowing of the sea, where there is no deputy coroner for the jurisdiction of the Admiralty of England, the inquest may be held only by the coroner having jurisdiction in the place where the body is first brought to land (*f*).

(*u*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 40 (1), which is in effect a re-enactment of the Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 8, repealed by the Act of 1887. Provision is made for the absorption of detached parts of counties into the counties surrounding them by the Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 53 *et seq.*, in pursuance of the Local Government (Boundaries) Act, 1887 (50 & 51 Vict. c. 61), s. 2 (1), (b). There does not appear to be any information as to how many of these detached parts of counties remain. From information supplied by the clerk to the Cambridgeshire County Council it appears that there is still in Cambridgeshire a detached part of Suffolk, namely, the parishes of Newmarket and Exning. As to the expenses of inquests in detached parts of counties, see p. 295, *post*.

(*w*) Coroners Act, 1844 (7 & Vict. c. 92), s. 20.

(*a*) *Ibid.*, s. 19.

(*b*) *Ibid.*, s. 20.

(*c*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 29 (2). For the definition of the verge and the duties etc. of the coroner of the King's Household, see p. 230, *post*.

(*d*) 2 Hale, P. C. 54.

(*e*) See *R.* v. *Keyn* (1876), 2 Ex. D. 63, *per* COCKBURN, C.J., at p. 162.

(*f*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7 (1), which is identical in language with part of s. 1 of 6 & 7 Vict. c. 12, now repealed.

SECT. 3. County Coroners.

Where there is a deputy coroner of the Admiralty, such coroner has concurrent jurisdiction with the coroner for the county or place where the body is brought to land (*g*).

SUB-SECT. 5.—*Salary and Fees.*

Amount of salary.

505. All county coroners and other coroners who are paid out of the county rate are now paid a salary in lieu of the fees, mileage, and allowances to which they were entitled before the year 1860 (*h*). The amount of the salary is such as may be agreed upon between the coroner and the council of the county (*i*) for which or some part of which the coroner acts. It is payable quarterly to the coroner by the treasurer of the county out of the county rate; and whenever from death, removal, or any other cause the coroner is not entitled to the salary for the whole of a quarter, a proportionate part must be paid to him, or in case of his death to his personal representatives (*k*).

Fixing of salary in case of disagreement.

506. If the coroner, on his appointment, and the county council are unable to agree on the amount of the salary, the Home Secretary may, and on the application of the coroner must, fix and determine the amount of the salary, having regard to the average number of inquests held by the predecessor of such coroner in the preceding five years, and also to the special circumstances of each case and the general scale of salaries of county coroners. After the lapse of every successive five years after the appointment of the coroner, the coroner and the county council may revise and thereby increase or diminish such salary, having regard only to the number of inquests held by the coroner in the five years immediately preceding, subject in case of their disagreement to appeal to the Home Secretary, who, however, in case of the revision of a salary, must have regard only to the number of inquests held by the coroner in the previous five years, and not to any special circumstances as he may do in fixing the salary of a coroner on his appointment.

(*g*) As to such concurrent jurisdiction, see p. 233, *post*.

(*h*) At first the coroner served his office without fee or reward, as appears from the form of the oath in Britton, cap. I. The statute 3 Hen. 7, c. 1 (2), established a coroner's fee of 13*s*. 4*d*. for each inquest held upon a person slain of the goods and chattels of him that was the slayer, and if he had no goods, of such amerciaments as should fortune any township to be amerced for the escape of such murderer; and the statute 1 Hen. 8, c. 7, forbade the practice that had arisen of the coroner requiring such fee to be paid for inquests upon persons dead by misadventure. The statute 25 Geo. 2, c. 29, ordained payment of a coroner's fee for all inquests held upon view of dead bodies, such payments to be made out of the county rate, except in certain excepted cases, and these fees were replaced by salaries by the operation of the County Coroners Act, 1860 (23 & 24 Vict. c. 116). By s. 43 of the Coroners Act, 1887 (50 & 51 Vict. c. 71), nothing in that Act is to affect the law respecting the salaries of coroners of counties.

(*i*) The county council is put in the place of the justices in quarter sessions with regard to coroners' salaries by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xi.).

(*k*) County Coroners Act, 1860 (23 & 24 Vict. c. 116), s. 4, the operation of which is expressly reserved by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 43, which provides that nothing in that Act shall affect the law respecting the salaries of coroners for counties.

If a coroner whose salary has been fixed either on appointment or revision ceases to hold the office within the period of five years from the date when the salary was so fixed, his successor is not bound to accept the salary so fixed for the remainder of the period of five years, but may at once apply to the Home Secretary to fix the salary anew for the succeeding five years. And when the salary has been fixed, either on appointment or revision, the coroner is entitled to be paid a salary at the rate so fixed for the succeeding five years, notwithstanding that the district to which he is assigned is subdivided by Order in Council and a new coroner appointed and assigned to a part of that district (*l*).

If the Home Secretary decrease the salary of a coroner on revision after a period of five years, as he may do if the circumstances so require, his decision is final, and no appeal therefrom lies to a court of law (*m*).

Joint committee.

507. If, by reason of the district of a county coroner being partly in one and partly in another administrative county, the coroner is appointed by a joint committee for the entire county, the amount payable in respect of the salary, fees, and expenses of such coroner is to be defrayed in like manner as costs of the joint committee are directed by the Local Government Act, 1888, to be defrayed (*n*).

Remedy for non-payment.

508. The remedy for non-payment of salary to a coroner payable out of the county rates is by an application to the High Court for a prerogative writ of mandamus against the county council (*o*). An action for a declaration of rights or for a mandamus will not lie (*o*).

Allowances.

509. As a salary is substituted for the fees, mileage, and allowances of a county coroner, such coroner is not entitled in addition to such salary to travelling or other personal expenses incurred in holding an inquest. But although this is the case when an inquest is actually held, the county council may, if they see fit, order the payment of allowances for travelling to any coroner who shall show to the satisfaction of the county council that he has been compelled in the discharge of his office to travel from his usual place of abode for the purposes of taking an inquisition, but which in the exercise

(*l*) County Coroners Act, 1860 (23 & 24 Vict. c. 116), s. 4, as explained in *Baxter* v. *London County Council* (1890), 63 L. T. 767, *per* DAY, J., at p. 770. For the division of a district by Order in Council, see p. 214, *ante*.

(*m*) *Ex parte Driffield* (1871), L. R. 7 Q. B. 207.

(*n*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 5 (3), (4). The manner in which the costs of the joint committee are directed to be defrayed appears in s. 46 (3) of that Act as follows:—"All costs or sums payable by the joint committee shall be apportioned by the joint committee between the several administrative counties in such manner as is provided by law, or by the practice heretofore adopted, or in such other manner as may be from time to time agreed upon by the councils of the several administrative counties, or in default of agreement may, upon the application of any of such councils, be determined by arbitration in manner provided by the Act; and each county council shall pay the sum so apportioned to the treasurer of the joint committee, and the sum so paid shall be deemed to be paid for general county purposes"; see further title LOCAL GOVERNMENT.

(*o*) *Baxter* v. *London County Council*, *supra*.

SECT. 3. County Coroners.

of his discretion he deemed to be unnecessary and declined to take (*p*).

Admission to bail etc.

510. Where a county coroner admits a person charged with manslaughter to bail, he is entitled to the like fee as a clerk to a justice is entitled on the admission to bail of a person so charged (*q*).

A coroner, while he has the custody of the inquisition and depositions, is bound to supply copies thereof on demand to any person charged by the inquisition with murder or manslaughter, and is entitled to payment therefor (*r*).

When acting as sheriff.

511. Where any writ, process, or extent whatsoever is directed to and executed by a coroner for a county in the place of a sheriff, the coroner, in addition to any salary to which he is entitled, is entitled to receive the same poundage fees or other compensation or reward for executing the writ, process, or extent, and has the same right to retain, and all other remedies for the recovery of the fees, compensation, or reward as the sheriff would have been entitled to and had in whose place such coroner was substituted; and if the fees or compensation payable to the sheriffs are at any time increased by Act of Parliament or otherwise, the coroner is entitled to such increased fees or compensation (*s*).

Except to the extent that he may be authorised by statute (*t*), a coroner may not take any fee or remuneration in respect of anything done by him in the execution of his office (*u*).

Repayment of expenses.

512. Statutory provision is made for the repayment to a coroner of the expenses of an inquest which the coroner is authorised to incur and pay (*a*).

SUB-SECT. 6.—*Removal.*

Grounds for removal.

513. A coroner may be removed from his office by the Lord Chancellor for inability or misbehaviour in the discharge of his duty; and if convicted before a competent court of extortion or corruption or wilful neglect of his duty or misbehaviour in the discharge of his duty, he may, unless his office of coroner is annexed to any other office, in addition to any other punishment, be adjudged by the court before whom he is so convicted to be removed from his office (*b*).

(*p*) Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 21, altered by the substitution of the county council for the justices of the county by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xi.).

(*q*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 16; for such fees, see title MAGISTRATES.

(*r*) *Ibid.*, s. 18 (5). The rate of payment must not exceed three halfpence per folio of ninety words (*ibid.*). But it is to be noted that this rate only applies to copies of depositions supplied on the demand of a person charged with murder or manslaughter, and not to copies supplied to any other person.

(*s*) *Ibid.*, s. 15. For the occasions when it is the duty of a county coroner to act as sheriff, see p. 248, *post*.

(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 43.

(*u*) *Ibid.*, s. 17. The only fees to which a coroner is entitled in addition to his salary are the fees for admitting to bail a person charged with manslaughter (see *supra*), and the fees etc. earned when acting as sheriff. As to his right to charge for copies of the inquisition and depositions, see *supra*.

(*a*) *Ibid.*, ss. 25—28; see p. 294, *post*.

(*b*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 8 (1), (2); on this head see, further, p. 251, *post*.

514. A coroner may be ousted from his office by judgment on *quo warranto*, and in such case a new writ *de coronatore eligendo* issues as a matter of course (*c*).

SECT. 4.—*Borough Coroners.*

SUB-SECT. 1.—*Appointment.*

Boroughs possessing the right to appoint.

515. Where a county borough has a separate court of quarter sessions, or where a borough, not being a county borough, contained according to the census of 1881 a population of not less than ten thousand, and has a separate court of quarter sessions, the grant of which was made before the 13th August, 1888, the borough council must from time to time appoint a fit person to be coroner of the borough. The council of a county borough to which a grant of a separate court of quarter sessions may hereafter be made must make the first appointment of a coroner within ten days next after receipt of the grant (*d*).

Boroughs which do not possess the right.

516. If, however, a borough, having a separate court of quarter sessions, contained according to the census of 1881 a population of less than ten thousand, the borough council cannot appoint a coroner for the borough, but the area of the borough is as regards coroners included in the county as if the borough had not a separate court of quarter sessions, and is subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county (*e*).

(*c*) *Re Hemel Hempstead Coronership* (1855), 5 De G. M. & G. 228.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 171 (1), as limited by the Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 37, 38, 126, of which s. 37 provides that the grant after the passing of the Act of a court of quarter sessions to a borough, not being a county borough, shall not affect the powers, duties, or liabilities of the county council as respects the area of that borough, or exempt the parishes of the borough from being assessed to county contributions as before, or confer on the borough council any powers or duties further than are necessary for establishing and maintaining the court of quarter sessions in the borough; s. 38 (2) (a) deprived boroughs having a separate court of quarter sessions but a population of less than 10,000 of their right to appoint a coroner for the borough; and s. 126 repealed so much of the Municipal Corporations Act, 1882, as was inconsistent with these provisions. The words "after receipt of the grant" appear to be used in this section instead of the words "after the grant shall have been signified to the council" which occurred in the corresponding s. 62 of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), in order to obviate the occurrence of such a case as happened in *R.* v. *Grimshaw* (1847), 10 Q. B. 747, where the appointment was made before the grant had passed the Great Seal, though within ten days after Her Majesty's pleasure to make the grant had been notified to the council. It was, however, there held that, although the appointment was irregular, such irregularity was cured by the person so appointed actually exercising the office and being recognised in his office by the council. As to coroners in county boroughs which have no separate court of quarter sessions, see p. 218, *ante*.

(*e*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 38 (2), (5). Formerly all quarter sessions boroughs were required to appoint a coroner for the borough under s. 171 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), but this privilege was taken away by the above section of the Local Government Act, 1888 (51 & 52 Vict. c. 41).

SECT. 4. Borough Coroners.

A borough which is not a county borough and has no separate court of quarter sessions is for all purposes of coroners part of the county in which it is situate, unless it is a liberty or franchise with a separate coroner for the same, and no coroner may hold an inquest belonging to the office of coroner in such borough except a coroner for the county (or his deputy), or a coroner or a deputy coroner for the jurisdiction of the Admiralty of England (*f*).

Mode of appointment.

517. No writ *de coronatore eligendo* is required for the election of a borough coroner, and the election to fill up a vacancy should ordinarily be made within ten days after the vacancy occurs, although the council may postpone the appointment, either generally or in any particular case, for a period not exceeding three months from the date at which the vacancy occurs (*g*). Although it is advisable that the appointment should be under seal (*h*), it is not invalid because not under seal (*i*).

SUB-SECT. 2.—*Qualification.*

Qualification.

518. No special qualification of estate, residence, or otherwise is required for being appointed to or holding the office of borough coroner; all that is required is that the coroner shall be a "fit person," and shall not be an alderman or councillor of the borough (*k*).

Quo warranto.

519. Although a borough coroner is appointed by the council of the borough, he is an officer of the Crown and not of the corporation, and his office is therefore not such an "office" as would entitle the relator, on an information in the nature of a *quo warranto* brought to try the right to the office, to costs (*l*) on judgment being given for the Crown (*m*).

SUB-SECT. 3.—*Jurisdiction.*

Jurisdiction within the borough.

520. In a borough with a separate court of quarter sessions and having its own coroner, no coroner may hold an inquest belonging to the office of coroner, except the coroner of the borough (or his deputy), or a coroner or deputy coroner for the jurisdiction of the Admiralty of England (*n*).

(*f*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7 (3). For the occasions on which the deputy of a county coroner may act, see p. 236, *post;* and as to the coroner and deputy coroner for the Admiralty, see pp. 231 *et seq.*, *post.*

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 171 (3), as extended by the Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 1 (6).

(*h*) See *R.* v. *Stamford Corporation* (1844), 6 Q. B. 433.

(*i*) *R.* v. *Grimshaw* (1847), 10 Q. B. 747, 753.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 171 (1), (2); Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 33, which provides that nothing in that Act shall affect the application to coroners of a borough of the provisions of the Municipal Corporations Act, 1882, with respect to the appointment, qualification, tenure of office, and payment of a coroner of a borough.

(*l*) The statute applicable to costs on *quo warranto* in respect of a corporate office is Municipal Offices Act, 1710 (9 Ann. c. 25).

(*m*) *R.* v. *Grimshaw* (1847), as reported 5 Dow. & L. 249. As to *quo warranto* proceedings, see further title CROWN PRACTICE.

(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7 (2), as modified by Local

Prisons.

521. A prison, however, which at the commencement of the Prison Act 1865 (*o*), was a county prison, and as to which no statutory rules have been made (*p*) modifying the jurisdiction of the county coroner, still remains within the jurisdiction of the county coroner, although such prison be locally situate within a borough; and the county coroner, and not the borough coroner, is therefore the person entitled to hold inquests upon the bodies of prisoners dying within such prison (*q*).

SUB-SECT. 4.—*Salary and Fees.*

Remuneration.

522. The coroner of a borough is entitled to have by order of the recorder (subject to the provisions of any other Act relating to coroners) the following remuneration, namely: for every inquisition which he duly takes within the borough, twenty shillings; and for every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition, ninepence (*r*). As this remuneration is only payable by order of the recorder for inquests duly taken, it is within the discretion of the recorder to disallow it in any particular case where, in his judgment, the inquest was unnecessary or otherwise not duly taken; and if the recorder on that ground refuse to allow the same, the King's Bench Division will not interfere with his decision (*s*).

Special fee.

523. A borough coroner is also entitled to a further fee of six shillings and eightpence for each inquest held by him, which fee the borough council must order their treasurer to pay to him on being satisfied of the correctness of the account rendered by the coroner of the expenses paid by him in respect of such inquest (*t*). The payment of this fee is not subject to the discretion of the recorder, nor to that of the borough council, provided that the council are satisfied that the expenses shown in the coroner's account were in fact incurred (*a*).

Government Act, 1888 (51 & 52 Vict. c. 41), s. 38 (2) (a). For the occasions on which the deputy of the borough coroner may act, see p. 236, *post*; and as to the coroner and deputy coroner of the Admiralty, see pp. 231 *et seq.*, *post*.

(*o*) 28 & 29 Vict. c. 126. See generally title PRISONS AND REFORMATORIES.

(*p*) The power to make such rules is vested in the Secretary of State by s. 30 of the Prison Act, 1877 (40 & 41 Vict. c. 21).

(*q*) *R.* v. *Robinson* (1887), 19 Q. B. D. 322.

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 171 (4), Scheds. IV. and V. No allowance is made for the distance beyond two miles covered in returning from holding the inquest (*R.* v. *Oxfordshire Justices* (1818), 2 B. & Ald. 203, decided upon similar words relative to the mileage fees of county coroners in Coroners Act, 1752 (25 Geo. 2, c. 29), s. 1, repealed by Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 45).

(*s*) *R.* v. *Kent Justices* (1809), 11 East, 229. This case was decided with regard to the fees of a county coroner, which at that time were payable by the order of the justices in respect of any inquest duly held, but applies equally to the above-mentioned fees of a borough coroner payable by order of the recorder. See also *R.* v. *Carmarthenshire Justices* (1847), 10 Q. B. 796.

(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 27 (2).

(*a*) *R.* v. *Gloucestershire Justices* (1857), 7 E. & B. 805, where it was decided that the justices had no jurisdiction to disallow proper expenses actually incurred by a county coroner on holding an inquest, whether it was proper that

SECT. 4. **Borough Coroners.**

Admission to bail etc.

524. In common with other coroners, when a borough coroner admits a person charged with manslaughter to bail, he is entitled to the like fee as a clerk to a justice is entitled to on the admission to bail of a person so charged (*b*).

Save as hereinbefore appears, a borough coroner may not take any fee or remuneration in respect of anything done by him in the execution of his office (*c*).

SUB-SECT. 5.—*Removal.*

Removal by borough council.

525. A borough coroner holds his office during good behaviour (*d*), and may therefore in a proper case be removed by the council that appointed him (*e*).

Removal by Lord Chancellor.

He is also removable by the Lord Chancellor or Chancellor of the Duchy of Lancaster (as the case may be) for inability or misbehaviour in the discharge of his duty in like manner and by the like means as a county coroner (*f*); and if convicted of extortion, corruption, wilful neglect of his duty, or misbehaviour in the discharge of his duty, he may, in addition to any other punishment, unless his office of coroner is annexed to any other office, be adjudged by the court before whom he is so convicted to be removed from his office and to be disqualified from acting as coroner, and in such case the council of the borough is forthwith to proceed to appoint another coroner as in the case of any other vacancy (*g*).

SECT. 5.—*Franchise Coroners.*

SUB-SECT. 1.—*Definition.*

Definition.

526. A franchise coroner means the coroner of the King's household, a coroner or deputy coroner for the jurisdiction of the Admiralty, a coroner appointed by the King in right of his Duchy of Lancaster, and a coroner for any town corporate, liberty,

such inquest should be held or not, and the borough coroner's fee of 6*s.* 8*d.* is placed on the same basis as the expenses of the inquest. As to the payment of expenses incurred by the coroner, see p. 294, *post.*

(*b*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 16. As to such fees, see title MAGISTRATES; and as to the supply of copies of inquisitions and depositions, see p. 224, *ante.*

(*c*) *Ibid.*, s. 17. The words of this section are "Save as is authorised by this or any other Act a coroner shall not take" etc.; but the only enactments which authorise a borough coroner to take any fee or remuneration are those before mentioned.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 171 (2).

(*e*) By the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 33, nothing in that Act is to affect the application to borough coroners of the provisions of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), with respect to the tenure of the office of such coroners. As, however, the Coroners Act, 1887, contains provisions for the removal of a borough coroner by the Lord Chancellor or a court of law for misbehaviour, the enactment in this section appears to show that the provision of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), namely, that a borough coroner holds his office during good behaviour, means that in case of misbehaviour he may be removed from his office by the council that appointed him, the power of the council in this respect being unaffected by the provisions in the Coroners Act, 1887 (50 & 51 Vict. c. 71), as to his removal by other authorities.

(*f*) *Ibid.*, s. 8 (1); see p. 251, *post.*

(*g*) *Ibid.*, s. 8 (2).

SECT. 5. Franchise Coroners.

lordship, manor, university, or other place, the coroner for which before September 16, 1887 was appointed by any lord, or was appointed otherwise than by election of the freeholders of a county or part of a county, or by a borough council, and the expression "franchise" means the area within which the franchise coroner exercises jurisdiction (*h*).

Right of appointment.

527. The statute (*i*) which confirmed to counties the right to choose their own coroners expressly saved "to the King and other lords who ought to make such coroners their seignories and franchises," and such right of appointment is left untouched by all subsequent Acts relating to coroners (*k*).

Prescription and grant.

528. The Crown may claim the privilege of making a coroner by prescription, but a subject can claim it only by grant from the Crown, for the privilege is of so high a nature that no subject can well entitle himself to it by prescription only (*l*).

SUB-SECT. 2.—*King's Coroner and Attorney.*

King's coroner and attorney.

529. The King's coroner and attorney exercises functions of a different nature from those of coroners generally (*m*), and does not come within the statutory definition given above, although usually described as a franchise coroner (*n*).

He is appointed by the Lord Chief Justice of England. The office of King's coroner is distinct from that of Master of the Crown Office, and different persons may be appointed for the respective offices, but they have in fact for a long time past been filled by the same person. The King's coroner and attorney is by virtue of his appointment a Master of the Supreme Court (*o*). He and the

(*h*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 42.

(*i*) 28 Edw. 3, c. 6 (1354).

(*k*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 30 (3), which enacts that nothing in that Act shall affect the mode in which a franchise coroner is elected. See also the repealed enactments, Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 29; Coroners Act, 1860 (23 & 24 Vict. c. 116), s. 9.

(*l*) 2 Hawk. P. C., c. 9, s. 11; Co. Litt. 114 a.

(*m*) The office is to be traced back to the ancient office of Clerk of the Crown, but it cannot be said when it became a distinct office. Until recently the King's coroner and attorney was appointed by letters patent, and the special duties described in his oath of office were to write and extract out all amerciaments, fines, issues, and forfeitures to the Crown. It was also formerly his duty to take inquisitions on the bodies of all persons dying within the King's Bench Prison, or the rules thereof, for which he received a fee of one guinea from the friends of the deceased, enforcing his right thereto by the power of refusing his warrant for the removal of the body until the money was paid.

(*n*) See Sir J. Jervis on Coroners (1829), p. 4, where it is stated that the Master of the Crown Office or Clerk of the Crown was coroner of the King's Bench and had jurisdiction over matters arising within the prison of that court. By s. 19 of the Queen's Prison Act, 1842 (5 & 6 Vict. c. 22), which abolished the Fleet and Marshalsea prisons, it was provided that all inquests upon the bodies of any persons dying within the Queen's prison or the rules of the Queen's Bench Prison should be held by the coroner of the City of London; and as the Queen's Bench Prison has also been abolished, it cannot be said that the Master of the Crown Office is now coroner of any "place." As to the Master of the Crown Office, see title CROWN PRACTICE.

(*o*) Supreme Court of Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 9 (2).

SECT. 5. Franchise Coroners.

Master of the Crown Office have the care and custody of the records and other proceedings on the Crown side (*p*). Criminal informations in the King's Bench Division other than *ex officio* informations by the Attorney-General or Solicitor-General are issued by and in the name of the King's coroner and attorney, who may take the recognisance from the person procuring the information to be exhibited effectually to prosecute the same (*q*). In proceedings in error the joinder in error is made by the King's coroner and attorney, if not made by the Attorney-General (*r*), and from him is obtained the memorandum or certificate of the allowance of the writ of error (*s*). He enters minutes of the judgments on the Crown side of the King's Bench Division (*t*), and examines, upon reference to him by the court, the interrogatories exhibited to persons charged with contempt, with power to disallow any interrogatory that he considers irrelevant or improper (*a*).

SUB-SECT. 3.—*Coroner of the King's Household.*

Coroner of the King's household.

530. The coroner of the King's household is appointed by the Lord Steward for the time being of the King's household (*b*). He makes his declaration of office before the Lord Steward of the King's household, and must reside in one of the King's palaces, or in such other convenient place as may from time to time be allowed by the Lord Steward of the King's household. He has exclusive jurisdiction in respect of inquests on persons whose bodies are lying within the limits of any of the King's palaces or within the limits of any other house where the King is then demurrant and abiding in his own royal person, notwithstanding the subsequent removal of the King from such palace or house. The limits of such palace or house are deemed to extend to any courts, gardens, or other places within the curtilage of such palace or house, but not further, and where a body is lying dead in any place beyond those limits, the coroner of the King's household has no jurisdiction to hold an inquest on such body, and the coroner of the county or borough has jurisdiction to hold that inquest in the same manner as if that place were not within the verge (*c*).

(*p*) Crown Office Rules, 1906, r. 3. As to the Crown Office, see title CROWN PRACTICE.

(*q*) *Ibid.*, r. 35.

(*r*) *Ibid.*, r. 182, Form No. 130.

(*s*) *Ibid.*, r. 199.

(*t*) *Ibid.*, r. 165.

(*a*) *Ibid.*, r. 242 (14).

(*b*) For the Lord Steward, see title CONSTITUTIONAL LAW.

(*c*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 29 (1), (2), (4), (7). At common law the coroner of the verge had exclusive jurisdiction within the verge, which comprehended a circuit of twelve miles around the residence of the King's courts. Owing to the frequent removal of the King's court great delay and failure of justice often arose from such exclusive jurisdiction, to remedy which the statute 28 Edw. 1, c. 3, provided that the coroner of a county should be associated with the coroner of the verge to hold inquests on matters arising within the verge. By the statute 33 Hen. 8, c. 12, s. 3, a discrimination was made between inquests on deaths within the precincts of the palace and those without the precincts but within the verge, and the former were placed within the exclusive jurisdiction of the coroner for the King's household, while the latter remained

531. The jurors on an inquest held by the coroner of the King's household consist of officers of the King's household, to be returned by such officer of the King's household as may be directed to summon the same by the warrant of such coroner (*d*).

Delivery of inquisitions etc.

532. Where the inquisition charges a person with murder or manslaughter, the coroner of the King's household must deliver the inquisition, depositions, and recognisances to the Lord Steward of the King's household, or, in his absence, to the Treasurer and Comptroller of the King's household, and the recognisances must be taken for the appearance of the persons bound by them before the said Lord Steward, or in his absence, before the said Treasurer and Comptroller. All other inquisitions, depositions, and recognisances must be delivered to the Lord Steward of the King's household to be filed among the records of his office (*e*).

Application of Coroners Act, 1887.

533. Subject to these special provisions, the coroner of the King's household has within the said limits the same jurisdiction and powers, and is subject to the same obligations, liabilities, and disqualifications, and generally to the provisions of the Coroners Act, 1887, and to the law relating to coroners, in like manner as any other franchise coroner (*f*).

Jurisdiction of the Lord Steward.

534. The Lord Steward of the King's household or the Treasurer and Comptroller of the King's household has no jurisdiction to inquire of, try, hear, or determine any offence committed beyond the said limits, or to array, try, or give judgment upon any person charged by any inquisition found before a coroner for any place beyond the said limits, but every such offence is to inquired of, tried, heard and determined, and every such person is to be arraigned, tried, and have judgment, according to the ordinary course of law (*g*).

SUB-SECT. 4.—*Coroner of the Admiralty.*

Admiralty coroner.

535. The coroner of the Admiralty is appointed by royal patent. Since the year 1674, and perhaps even before that time, it has been the practice to issue such patent to the judge of the Admiralty Court (*h*). Since the abolition of the office of judge

within the common jurisdiction of the coroner of the King's household and the coroner of the county. The jurisdiction of the coroner of the King's household is now confined to the precincts of the palaces as stated in the text, and the verge beyond such precincts is within the exclusive jurisdiction of the coroner for the county or franchise within which it lies.

(*d*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 29 (3).

(*e*) *Ibid.*, s. 29 (5), (6).

(*f*) *Ibid.*, s. 29 (8).

(*g*) *Ibid.*, s. 29 (9). As to the jurisdiction of the Lord Steward generally, see title CONSTITUTIONAL LAW.

(*h*) The first judge of the Admiralty Court was appointed in 1482, but his patent, as transcribed in the Patent Rolls, does not contain any allusion to the office of coroner. The patent of Sir Leoline Jenkins, who was appointed judge of the court in 1674, is practically identical with the modern patent, and contains the clause relative to the office of coroner set out in note (*i*), p. 232, *post*. As to the Admiralty Court, see title ADMIRALTY, Vol. I., pp. 59 *et seq.*; COURTS; ROYAL FORCES.

SECT. 5. Franchise Coroners.

of the Admiralty Court by the Judicature Act, 1873, the patent does not appear to have been issued, nor does there now appear to be any person exercising the office of coroner of the Admiralty, or entitled to appoint deputy coroners of the Admiralty (*i*).

(*i*) Before the Judicature Act, 1873 (36 & 37 Vict. c. 66), the judge of the Admiralty Court was appointed coroner of the Admiralty by the patent by which he was appointed judge, and he was therein authorised "to take cognisance of and decide of wreck of the sea great and small, and of the death, drowning, and view of dead bodies of all persons whatsoever in the sea or public rivers, ports, freshwaters, or creeks whatsoever within the ebbing and flowing of the sea and high water mark throughout our kingdoms and dominions aforesaid and the jurisdiction of the Admiralty of England, together with the custody and conservation of the statutes concerning wreck of the sea and the office of coroner made in the third and fourth year of the reign of King Edward I. . . . with power by these presents of deputing and surrogating in your place one or more deputy or deputies as often as you shall think fit, and such substitute or substitutes at pleasure to revoke, and of exercising, expediting, and executing all and singular the premises or any of them by your aforesaid deputy." The last patent that contained this appointment to the office of coroner of the Admiralty was issued to Sir Robert Phillimore, who was judge of the Admiralty Court at the passing of the Judicature Act, 1873 (36 & 37 Vict. c. 66). Sir James (afterwards Lord) Hannen, who, on the death of Sir Robert Phillimore in 1877, was made President of the Probate, Divorce and Admiralty Division, was already a justice of the Queen's Bench Division, and the patent which appointed him President of the Probate, Divorce and Admiralty Division merely declares: "We etc. give and grant to our trusty and well-beloved Sir James Hannen, one of the justices of our High Court of Justice, the office of President of the Probate, Divorce and Admiralty Division of our High Court of Justice, to have the same so long as he shall well behave himself therein," etc. And all patents of appointment to the presidency of the Probate, Divorce and Admiralty Division since that time are in the same brief form. There is no personal appointment, therefore, of the president of that division as coroner of the Admiralty. By s. 16 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), there was transferred to the High Court the jurisdiction which at the commencement of that Act was vested in or capable of being exercised by (*inter alia*) the High Court of Admiralty, and such jurisdiction is expressed to include (subject to exceptions which have no reference to the office of coroner) the jurisdiction which was vested in or capable of being exercised by all or any one or more of the judges of the said court, sitting in court or chambers or elsewhere, when acting as judges or a judge in pursuance of any statute, law, or custom, and all powers given to the said court or to any such judges or judge by any statute, and also all ministerial powers, duties, and authorities incident to any and every part of the jurisdiction so transferred. The judge of the Admiralty Court, when acting as coroner, cannot be said to be acting as a judge of the Court of Admiralty; nor were his powers as coroner given to him by statute, nor can such powers be described as ministerial powers, duties, or authorities. It would therefore appear that the jurisdiction exercised by Sir R. Phillimore as coroner of the Admiralty by virtue of the above-mentioned patent was not transferred to the High Court of Justice by the Judicature Acts as part of the jurisdiction of the High Court of Admiralty. S. 12 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), further provides, with regard to the extraordinary duties of judges of the former courts, that if in any case not expressly provided for by the Act, a liability to any duty, or any authority or power, not incident to the administration of any court whose jurisdiction is by the Act transferred to the High Court of Justice shall have been imposed or conferred by any statute, law, or custom upon the judges or any judge of any of such courts (with certain specified exceptions), every judge of the High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise, every such duty, authority, and power in the same manner as if the Act had not passed, and as if he had been duly appointed the successor of a judge liable to such duty or possessing such authority or power

SECT. 5. Franchise Coroners.

Admiralty jurisdiction.

536. At common law county coroners have no jurisdiction in matters arising outside their county, and consequently had no jurisdiction in matters arising upon the high seas, which were within the exclusive jurisdiction of the Admiral and the deputy coroners appointed by the Admiral (*k*). Thus, an inquest could not be held by a county coroner upon a body found on the sea, but only by a coroner appointed by the Admiral (*l*).

The Admiral's jurisdiction was originally confined to matters arising on the high or outer seas, *super altum mare;* and so rigorous was the line of demarcation between the jurisdiction of the Admiral and that of the county coroner that as regards the shore of the outer sea between high and low water mark the jurisdiction was divided between them according to the state of the tide. Over such shore the Admiral had exclusive jurisdiction when the tide was in, and the county coroner when the tide was out (*m*).

On the other hand, the county coroner had exclusive jurisdiction in matters arising in arms or parts of the sea lying within the body of the county, *infra corpus comitatus* (*n*). And an arm of the sea was deemed to be within the body of the county either when one shore might be seen from the other shore (*o*), or where one standing on the one shore might see what was done on the other (*p*); for on this point authorities are not agreed (*p*). Thus Portsmouth harbour is within the body of the county, and the county coroner may go aboard a man-of-war in commission lying there to hold an inquest on the body of a seaman who has died aboard by a sudden or violent death (*q*).

When concurrent with jurisdiction of county coroner.

537. The Admiral's jurisdiction was, however, extended by statute (*r*) to empower him "to take cognisance of the death of man and mayhem done in great ships being and hovering in the main stream of great rivers below the bridges nearest to the sea"; but such jurisdiction is not exclusive and is concurrent with that of the

before the passing of the Act. It is submitted, however, that the duty, authority, or power of coroner of the Admiralty imposed or conferred upon Sir R. Phillimore was so imposed or conferred on him, not by any statute, law, or custom, but by a patent personal to the holder, and that therefore the jurisdiction of the office did not devolve upon the judges of the High Court under this section. It would appear, therefore, that the office is in abeyance, and this inference is strengthened by the fact that whereas the jurisdiction of the coroner was necessarily exercised through deputy coroners at various seaports, no deputy coroner for the Admiralty has been appointed since 1875, and no person now holds the office of such deputy coroner.

(*k*) 2 Hale, P. C. 54.

(*l*) See *R.* v. *Keyn* (1876), 2 Ex. D. 63, *per* COCKBURN, C.J., at p. 162.

(*m*) *Ibid.*, *per* COCKBURN, C.J., at p. 168; 3 Co. Inst. 113; *Constable's Case* (1601), 5 Co. Rep. 106 a, at 107 a.

(*n*) 2 Hale, P. C. 15, 54.

(*o*) *Leigh* v. *Burley* (1610), Owen, 122; *Violett* (or *Violent*) v. *Blake* (1618), Moore (K. B.), 892.

(*p*) 4 Co. Inst. 140; 2 Roll. Abr. 169; Fitzherbert's Grand Abridgment, tit. Corone, ed. 1516, fol. 272, par. 399.

(*q*) *R.* v. *Soleguard* (1738), Andr. 231, where the court granted an information against the captain of a man-of-war for obstructing the coroner when attempting to enter his ship.

(*r*) 15 Ric. 2, c. 3 (1391).

SECT. 5. Franchise Coroners.

county coroner (*s*), and does not extend to deaths that take place upon small ships (*t*).

Where the jurisdiction of the coroner of the Admiralty and of the county coroner is concurrent, the coroner who first takes the body is entitled to take the inquisition; and if he proceed to do so, the authority of the other is determined (*a*).

Provision where no Admiralty deputy coroner.

538. Great difficulty would be experienced if no inquest could be held on bodies found drowned on the sea coast in the absence of any deputy coroner of the Admiralty (*b*); it is accordingly provided by statute that where a body is found dead in the sea, or in any creek, river, or navigable canal within the flowing of the sea, where there is no deputy coroner for the jurisdiction of the Admiralty, the inquest may be held by the coroner having jurisdiction in the place where the body is first brought to land, and by none other (*c*), whether such coroner be a county or borough coroner (*d*) or the coroner of a franchise (*e*).

SUB-SECT. 5.—*Other Franchise Coroners.*

Appointment.

539. The appointment of a franchise coroner other than the King's coroner, the coroner of the King's household, and the coroner for the Admiralty, is made by the King in the case of the coroner for the Duchy of Lancaster, and in other cases is regulated by the terms of the charter or grant under which the right of appointment arises. Nothing in the Coroners Act, 1887, is to affect the mode in which such appointments are made (*f*), nor is the right of appointment of a franchise coroner transferred to county councils by the Local Government Act, 1888 (*g*).

(*s*) 2 Hale, P. C. 15, 16, 54; Fitzherbert's Grand Abridgment, tit. Corone, fol. 272, par. 399; *R.* v. *Soleguard* (1738), Andr. 231.

(*t*) Umfreville, Lex Coronatoria, p. 63, where is cited the case of a body drowned at St. Katherine's in the Thames below the bridge. The coroner of the Admiralty having taken an inquisition upon a view of the body, which was found to have been drowned by accident, the county coroner afterwards demanded the body that he might take an inquisition, which the coroner of the Admiralty refused to permit, and had the body buried. This was complained of to the King's Bench as an abuse, as the Admiralty had no jurisdiction unless the death occurred in a great ship, and an attachment was granted against the coroner of the Admiralty.

(*a*) Sir J. Jervis on Coroners (1829), p. 48; *R.* v. *Soleguard*, *supra*, *per* PROBYN, J.

(*b*) The districts for which deputy coroners of the Admiralty were appointed were in 1875 the Medway river, Plymouth, and Southampton and the Isle of Wight. No such deputy coroners have been appointed since 1875, and no person now holds that office; see note (*i*), p. 232, *ante*.

(*c*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7 (1).

(*d*) *Ibid.*, s. 7 (2).

(*e*) *Ibid.*, ss. 7 (1), 30 (4).

(*f*) *Ibid.*, s. 30 (3).

(*g*) *Re Local Government Act*, 1888, *Ex parte London County Council*, [1892] 1 Q. B. 33, where it was held that the power of appointing the coroner for the liberty of the Tower of London which was vested by charter of James II. in the Governor of the Tower was not transferred by the Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3 (10), (11), 5, 59, to the London County Council, and that the coroner for the county of London had no jurisdiction within the liberty,

SECT. 5. Franchise Coroners.

Remuneration.

540. A franchise coroner may by usage, or the terms of the grant or charter under which he is appointed, be paid either out of a local rate levied within the franchise or by fees and allowances. Where such a coroner was at the passing of the Coroners Act, 1887 (*h*), paid a salary out of the local rate, the provisions of that Act with respect to the expenses of inquests (*i*) apply as if such coroner were a coroner for a county (*k*), and they also apply to the City of London and the borough of Southwark (*l*).

Nothing in the Coroners Act, 1887, is to affect the remuneration to which a franchise coroner (who was not at the passing of that Act paid a salary out of the local rate) was entitled at the passing of that Act, and every such coroner continues to be entitled to receive the same fees, allowances, and remuneration as he would have been entitled to if that Act had not passed (*m*).

Where a coroner appointed and acting for the jurisdiction of the Cinque Ports, who is not paid a salary out of the local rate in lieu of allowances, deems it unnecessary to hold and declines to hold an inquest, and shows to the justices in general or quarter sessions assembled that he had nevertheless been compelled in the discharge of his office to travel from his usual place of abode for the purpose of taking that inquest, such justices may order the payment to that coroner of the same allowances for travelling as might be allowed in any other case (*n*).

Removal.

541. The Lord Chancellor, and any court of competent jurisdiction before whom a franchise coroner may be convicted for misdemeanour in his office, may remove or adjudge to be removed a franchise coroner in like manner and on like grounds as a county coroner (*o*). If such coroner be adjudged to be removed by the court, the lord or other person or persons entitled to the appointment of the coroner for the franchise must forthwith proceed to appoint another coroner as in the case of any other vacancy in the office (*p*). These powers of the Lord Chancellor and the court are in addition to and not in derogation of any power of the lord of the franchise or person or persons appointing a franchise coroner to remove such coroner in the exercise of powers to that effect contained in the grant or charter under which such coroner is appointed (*q*).

Application of Coroners Act, 1887.

542. Subject to the special provisions above mentioned as to remuneration, appointment, and removal, the provisions of the

although the coroner for the liberty was paid out of a rate in the nature of a county rate levied and allowed by the justices of the peace for the liberty.

(*h*) September 16, 1887.

(*i*) As to these expenses, see p. 294, *post*.

(*k*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 30 (1).

(*l*) *Ibid.*, s. 31. The coroner for the city and borough is elected by the mayor and commonalty of the City of London under a charter of Henry I.

(*m*) *Ibid.*, s. 30 (2).

(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 32.

(*o*) For the removal of a county coroner, see p. 224, *ante*; and p. 251, *post*.

(*p*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 8 (2).

(*q*) *Ibid.*, s. 30 (3), 35.

SECT. 5. Franchise Coroners.

Coroners Act, 1887, apply to a franchise coroner, except those in which a coroner for a county or a coroner for a borough is expressly named (*r*).

SECT. 6.—*Deputy Coroners.*

Appointment of deputy coroner.

543. Every coroner, whether for a county or a borough, must appoint by writing under his hand a fit person, approved by the chairman or mayor, as the case may be, of the council who appointed the coroner, not being an alderman or councillor of such council, to be his deputy, and may revoke such appointment, but such revocation shall not take effect until the appointment of another deputy has been approved as above provided (*s*). A duplicate of such appointment must be sent to such council and be kept among the records of the county or borough as the case may be (*t*). For the aforesaid purposes "the council who appointed a coroner" is, (1) where the coroner was, in pursuance of any section of the Local Government Act, 1888 (*a*), appointed by or on the recommendation of a joint committee, to be deemed to be any of the councils who appointed any member of that committee; and, (2) where a coroner for a district of a county is in pursuance of s. 34 (4) of the Local Government Act, 1888, appointed by the council of any county borough, to be deemed to be that council (*b*). In the case of a county coroner who has been elected before the date on which the provisions of the Local Government Act, 1888, as to the appointment of coroners came into force (*c*), the council of any county or county borough in which the district of the coroner is wholly or partially situated is for the aforesaid purposes to be deemed to be the council who appointed the coroner (*d*).

Jurisdiction of deputy coroner.

544. A deputy may act for the coroner during his illness or during his absence for any lawful or reasonable cause, or at any inquest which the coroner is disqualified for holding, but not otherwise. In the case of a borough coroner the necessity of his so acting must be certified on each occasion by a justice of the peace; such certificate must state the cause of absence of the coroner, and be openly read to every inquest jury summoned by the deputy coroner, and is conclusive evidence of the jurisdiction of the deputy to act (*e*). The absence of the coroner owing to his being engaged in holding another inquest is "absence for a lawful or reasonable cause" so as to entitle the deputy coroner to act in his place. If the jury are sworn and the inquest commences properly before the

(*r*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 30 (4).

(*s*) Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 1 (1), repealing s. 172 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*t*) Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 1 (2).

(*a*) 51 & 52 Vict. c. 41. Coroners are appointed by or on the recommendation of a joint committee under *ibid.*, ss. 5 (4), 34 (4); see p. 217, *ante*.

(*b*) Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 1 (7).

(*c*) That is, on the appointed day, being either the 1st April, 1889, or such earlier or later day as the Local Government Board appointed (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 109); see title LOCAL GOVERNMENT.

(*d*) Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 1 (8).

(*e*) *I bid.*, s. 1 (3).

deputy, he should continue to hold the inquest to its conclusion, although in the meanwhile the coroner comes to the place where the inquest is being held and is present while it is being conducted (*f*).

The deputy of a coroner, notwithstanding the coroner vacates his office by death or otherwise, continues in office until a new deputy is appointed, and acts as the coroner while the office is vacant in like manner as during the illness of the coroner. One certificate may extend to the period of the vacancy, and the deputy is entitled to receive in respect of the period of the vacancy the like remuneration as the vacating coroner (*g*).

For the purpose of any inquest or act which a deputy of a coroner is authorised to hold or do the deputy is deemed to be that coroner, and has the same jurisdiction and powers and is subject to the same obligations, liabilities, and disqualifications as that coroner, and generally is subject to any statute or law relating to coroners in like manner as that coroner (*h*). An inquisition held by a deputy coroner is properly described as taken before the coroner (*i*).

Deputies of franchise coroners.

545. A franchise coroner may be authorised by the terms of his patent to appoint a deputy (*k*), and some franchise coroners claim a prescriptive right to appoint a deputy, either with or without the consent of the lord of the franchise. The general law as to deputy coroners is applicable to deputies appointed by franchise coroners, but not the enactments expressly relating to deputies appointed by county and borough coroners (*l*).

Part III.—Duties, Privileges and Liabilities of Coroners.

SECT. 1.—*Duties of Coroners.*

SUB-SECT. 1.—*Introductory.*

Duties of coroner.

546. The chief duties of a coroner are (1) to hold inquests *super visum corporis*, (2) to hold inquests upon treasure trove,

(*f*) *R.* v. *Perkin* (1845), 7 Q. B. 165.

(*g*) Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 1 (4).

(*h*) *Ibid.*, s. 1 (5); and compare *R.* v. *Johnson* (1873), L. R. 2 C. C. R. 15.

(*i*) *R.* v. *Perkin*, *supra*. As to the signing of inquisitions by the deputy coroner, see p. 277, *post*.

(*k*) As in the case of the coroner of the Admiralty or the Governor of the Isle of Wight.

(*l*) This is the combined result of the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 30 (4), which applies the provisions of that Act to franchise coroners except where a coroner for a county or borough is expressly named, and the Coroners Act, 1892 (55 & 56 Vict. c. 56), s. 3, which enacts that that Act shall be construed as one with the Coroners Act, 1887 (50 & 51 Vict. c. 71), and so applies the provisions of s. 1 of the Act of 1892 (55 & 56 Vict. c. 56) to the deputies of franchise coroners where such provisions are not expressly confined to the deputies of county or borough coroners.

SECT. 1. Duties of Coroners.

and (3) to act upon occasion in the place of the sheriff. He also has certain duties in respect of outlawry. In the City of London his duties extend to the holding of inquests on outbreak of fires (*m*).

Certain powers and duties formerly exercised and performed by coroners are now expressly abolished. A coroner may not take pleas of the Crown, nor hold inquests of royal fish nor of wreck, nor of felonies except felonies on inquisitions of death; nor may he inquire of the goods of such as by the inquest are found guilty of murder or manslaughter, nor cause them to be valued and delivered to the township (*n*).

Coroners Act, 1887.

547. The powers and duties of coroners have been regulated and modified by a large number of statutes, of which the earliest was the Statute of Westminster I. (*o*). All of these statutes substantively relating to coroners which were in force in 1887 (thirty-three in number) were wholly repealed, or repealed so far as they related to coroners, by the Coroners Act, 1887 (*p*), with certain exceptions (*q*). Such repeal is, however, subject to the following provisoes:—

(1) A coroner elected before the passing of the Act continues to hold office in like manner as if he had been elected under the Act, and

Effect on previous enactments.

(2) Any schedule of fees, allowances, and disbursements made by a local authority for a county or borough before the passing of the Act is, until a schedule is made in pursuance of the Act, to be of the same effect as if the schedule had been made in pursuance of the Act, and

(3) The repeal does not affect—

(a) The past operation of any enactment thereby repealed, nor anything duly done or suffered under any enactment thereby repealed; or

(b) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment thereby repealed; or

(c Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment thereby repealed; or

(d) Any inquest on any death which occurred before the commencement of the Act or an inquisition found thereon, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such inquest, investigation, legal proceeding and remedy, and the trial of any such inquisition might be carried on as if the Act had not passed.

(*m*) As to this jurisdiction, see p. 296, *post*.
(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 44.
(*o*) 3 Edw. 1, cc. 9, 10 (1275).
(*p*) 50 & 51 Vict. c. 71, s. 45 and Sched. III.
(*q*) These exceptions are: Coroners Act, 1844 (7 & 8 Vict. c. 92), ss. 1—6, 19—21, 27, 28, some of which sections have been partially repealed by Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67); and County Coroners Act, 1860 (23 & 24 Vict. c. 116), ss. 4, 7, 8, 10.

(4) The repeal does not revive any jurisdiction, office, duty, fee, franchise, liberty, custom, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not in force or existing at the passing of the Act.

(5) Save in so far as might be inconsistent with the Act, any principle or rule of law, or established jurisdiction, practice, or procedure, or existing usage, franchise, liberty, or custom, was, notwithstanding the repeal of any enactment by the Act, to remain in full force (*r*).

SUB-SECT. 2.—*Inquests super visum corporis.*

In general.

548. Where a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or that such person has died in prison, or in such place or in such circumstances as to require an inquest in pursuance of any Act, it is his duty, whether the cause of death arose within his jurisdiction or not, to issue, as soon as practicable, his warrant for summoning a jury to inquire touching the death of such person (*s*).

A coroner may hold one inquest upon the bodies of several persons, provided that they were all killed by the same cause and died at the same time (*t*).

Right to hold inquest.

549. A coroner has not an absolute right to hold an inquest in every case in which he chooses to do so (*a*); nor is it in general the duty of coroners voluntarily to obtrude themselves into private houses when they have not been sent for (*b*) and have received no notice from the police or other authority that death has occurred in circumstances which appear to them to call for an inquest. Such officious interference would be in many cases a censurable excess of duty. And if notice of the death is accompanied or followed by information that it was probably due to such cause as apoplexy or other visitation of God, so as to show that an inquest is not necessary, the coroner may reasonably exercise his discretion by not holding an inquest.

Duty to hold inquest.

Where, however, a coroner receives from the police authorities information of a sudden death in order that an inquest may be held, and there is no medical certificate of death from any natural cause, or other ground on which he can reasonably form an opinion as to the actual cause of death, it is his duty to hold an inquest; and in such case he cannot properly exercise any discretion to the contrary, unless, by inquiry or otherwise, he has obtained such credible information as may be sufficient to satisfy a reasonable mind that the death arose from illness or some other

(*r*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 45.
(*s*) *Ibid.*, s. 3 (1).
(*t*) *R.* v. *West* (1841), 1 Q. B. 826; *Re Mitchelstown Inquisition* (1888), 22 L. R. Ir. 279.
(*a*) *R.* v. *Price* (1884), 12 Q. B. D. 247, *per* STEPHEN, J., at p. 248.
(*b*) *R.* v. *Clerk* (1702), 1 Salk. 377, *per* HOLT, C.J.: "The coroner need not go *ex officio* to take the inquest, but ought to be sent for."

SECT. 1. Duties of Coroners.

cause rendering an inquest unnecessary (*c*). If a coroner has information which, if true, makes it his duty to hold an inquest, he is bound to hold such inquest; his jurisdiction to inquire does not depend upon the actual result of the inquiry (*d*).

Duty to give information to coroner.

550. It is the duty of every person to give information which may lead to the coroner having notice of circumstances requiring the holding of an inquest (*e*). Although this duty cannot be enforced in respect of individuals by any legal sanction, except where the duty is laid upon particular persons by statute (*f*), yet it is old law "that if a dead body whereon an inquest ought to be taken be interred or suffered to putrefy before the coroner hath viewed it the township shall be amerced" (*g*). It is, moreover, an indictable offence in any person to bury the body of anyone who has died a violent death before the coroner has had an opportunity of holding an inquest upon it (*h*), or in any manner, as by burning or otherwise, to dispose of any dead body in order to prevent an inquest being held upon it (*i*).

Delay in holding inquest.

551. A coroner may not delay holding an inquest after notice of death or of the finding of a dead body has been given him. However desirable it may be that those acquainted with a person found dead may have an opportunity of identifying the body at or before the inquest, it is inconsistent with a coroner's duty to suspend the holding of an inquest upon a body in a state of decomposition, for that cause only, during so long a period as five days (*k*).

(*c*) *Re Hull* (1882), 9 Q. B. D. 689, *per* Lord SELBORNE, L.C., at pp. 697—700, commenting on the statement in Sir John Jervis's Manual on Coroners, that "unless there is reasonable ground for suspicion that the party came to his death by violent and unnatural means, there is no occasion (except in the case of a person dying in gaol) for the interference of the coroner."

(*d*) *R.* v. *Stephenson* (1884), 13 Q. B. D. 331, *per* HAWKINS, J., at p. 339. In *R.* v. *Kent Justices* (1809), 11 East, 229, a coroner, being informed (as the fact was) that a man had died suddenly in a shop while purchasing some furniture, held an inquest, and the jury found a verdict of death by the visitation of God. The coroner having sent in a claim to sessions pursuant to statute 25 Geo. 2, c. 29, for payment of his fees for holding the inquest, the justices disallowed the charge on the ground that the inquisition had been improperly taken. An application for a mandamus to compel the justices to make the payment was refused on the ground that the statute made the justices judges of whether the inquisition was duly taken. The court, while exculpating the coroner from all imputation of improper practice, remarked, *per* Lord ELLENBOROUGH, that it was highly illegal for coroners to obtrude themselves upon private families without any pretence that the deceased died otherwise than a natural death.

(*e*) See *R.* v. *Clerk* (1702), 1 Salk. 377; 1 East, P. C. 378.

(*f*) As to instances of a statutory duty to give notice of death, see pp. 241 *et seq.*, *post*.

(*g*) Bac. Abr. tit. Coroners, C; Staundford, Pleas of the Crown, 51 G, cited with approval by Lord SELBORNE, L.C., in *Re Hull*, *supra*, at p. 692. "And if one be killed in a vill and the coroner make no inquest, the vill shall be amerced, for probably the coroner has no notice of it" (*Buckhurst's (Lord) Case* (1662), 1 Keb. 278, *per* TWISDEN, J.).

(*h*) 2 Hawk. P. C., c. 9, s. 23; *Anon.* (1702), 7 Mod. Rep. 10; *R.* v. *Bond* (1716), 1 Stra. 22.

(*i*) *R.* v. *Stephenson*, *supra*; *R.* v. *Price* (1884), 12 Q. B. D. 247.

(*k*) *Re Hull*, *supra*, *per* Lord SELBORNE, L.C., at p. 692. As to the effect of delay, see p. 253, *post*.

SECT. 1. Duties of Coroners.

Refusal to hold inquest.

552. If a coroner refuses or neglects to hold an inquest which ought to be held, the High Court of Justice, upon application made by or under the authority of the Attorney-General, may order an inquest to be held touching the death, and may order the said coroner to pay such costs of and incidental to the application as to the court may seem just (*l*).

(1) Deaths in prison.

553. The coroner of the jurisdiction to which the prison belongs wherein judgment of death is executed on any offender must within twenty-four hours after the execution hold an inquest on the body of the offender, and it is the duty of the jury at the inquest to inquire into and ascertain the identity of the body and whether judgment of death was duly executed on the offender. The inquisition must be in duplicate, and one of the originals is to be delivered to the sheriff (*m*).

The jurisdiction of a coroner to hold inquests upon prisoners dying in a prison which was on the 1st February, 1866 (*n*), a prison belonging to a county is not affected by the transfer of such prison to the Secretary of State (*o*), unless the Secretary of State has made rules (*p*) altering such jurisdiction; and, therefore, in the absence of such rules the county coroner, and not the borough coroner, is the proper person to hold inquests upon prisoners dying in any such prison, although the prison is locally situate within a borough (*q*).

It is the duty of the coroner in such a case to hold as full an inquiry into the cause of death as if the death had taken place outside the prison (*r*); and he is not discharged from this duty by a finding of the jury that no one in the prison is to blame for the death, or by the fact that the deceased was imprisoned under the sentence of a court which had previously investigated the circumstances in which the cause of death arose, and had found that the deceased was alone to blame (*s*).

Where an inquest is held on the body of a prisoner who dies within a prison, an officer of the prison or a prisoner therein or a person engaged in any sort of trade or dealing with the prison may not be a juror on such inquest (*t*).

(2) Lunatics.

554. In the case of the death of a lunatic patient, notice thereof,

(*l*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6. For the full provisions on this subject, see p. 187, *post*.

(*m*) Capital Punishment Amendment Act, 1868 (31 & 32 Vict. c. 24), s. 5, applied to cases of persons executed after sentence of death, passed at the Central Criminal Court by the Central Criminal Court (Prisons) Act, 1881 (44 & 45 Vict. c. 64), s. 2 (5), and to Military Prisons by the Army Act, 1881 (44 & 45 Vict. c. 58), s. 133 (2).

(*n*) That is, the date of the commencement of the Prison Act, 1865 (28 & 29 Vict. c. 126).

(*o*) By the Prison Act, 1877 (40 & 41 Vict. c. 21), s. 5.

(*p*) Under *ibid.*, s. 30.

(*q*) *R.* v. *Robinson* (1887), 19 Q. B. D. 322.

(*r*) *R.* v. *Graham* (1905), 93 L. T. 371, where a prisoner died from the effects of a wound received before his admission to prison.

(*s*) *Ibid.*

(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 3 (2).

SECT. 1. Duties of Coroners.

together with a statement relating thereto, must within forty-eight hours of the death be sent by the manager of the institution for lunatics (*u*) in which the patient died, or, in the case of a single patient, by the person having charge, to the coroner of the district (*a*).

Asylums.

The notice in the case of a death in an asylum must be prepared and signed by the clerk, and the statement must be prepared and signed by the superintendent, and in any other case the notice and statement must be prepared and signed by the medical superintendent or the medical attendant or the medical person or persons who attended the patient in his last illness (*b*). If the manager of an institution for lunatics, or the person having charge of a single patient, omits to send to the coroner notice of the death of a lunatic within the above-mentioned period of forty-eight hours he is guilty of a misdemeanour (*c*), and the coroner, upon receiving notice of the death of a lunatic within his district, if he considers that any reasonable suspicion attends the cause and circumstances of the death, must summon a jury to inquire into the same (*d*).

Workhouses.

In the case of the death of a poor person of unsound mind in any workhouse or other poor law institution, the notice thereof must be sent by the master of the workhouse, or by the superintendent, or the head officer of the poor law institution, and must be accompanied by a statement signed by the medical officer or the medical superintendent, or the medical man who attended the deceased in his last illness (*e*).

(3) Infants taken in to nurse etc.

555. If any person undertakes for reward the nursing and maintenance of one or more infants under the age of seven years apart from their parents or having no parents, for a longer period than forty-eight hours, such person, in case of the death of any such infant must within twenty-four hours of such death, give notice in writing thereof to the coroner of the district within which the body of such infant lies, and the coroner must hold an inquest thereon, unless a certificate under the hand of a duly qualified medical practitioner is produced to him, certifying that such medical practitioner has personally attended such infant during its last illness and specifying the cause of death, and the coroner

(*u*) By the Lunacy Act, 1890 (53 Vict. c. 5), s. 341, the expression "institution for lunatics" means an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs, a hospital or any other house or institution (not being an asylum) wherein lunatics are received and supported wholly or partly by voluntary contributions or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients, and a licensed house; and see title LUNATICS AND PERSONS OF UNSOUND MIND.

(*a*) Lunacy (Reports and Returns) Rules, 1895, r. 27 (1).

(*b*) *Ibid.*, r. 27 (2). For the prescribed form of notice and statement, see *ibid.*, Schedule, Form No. 21.

(*c*) Lunacy Act, 1890 (53 Vict. c. 5), s. 319.

(*d*) *Ibid.*, s. 84.

(*e*) General Order of the Local Government Board (No. 41293), 3rd November, 1900, published in the *London Gazette*, 13th November, 1900.

is satisfied that there is no ground for holding an inquest. If the person having the care of such infant neglects to give such notice, such person is on summary conviction liable to imprisonment for a term not exceeding six months, or to a fine not exceeding £25 (*f*).

(4) Drowned persons.

556. If a dead human body be found in or cast on shore from the sea or any tidal or navigable waters, or is found floating or sunken in any such waters and brought to the shore or bank thereof, the person finding the same must within six hours thereafter give notice to a parish officer of the parish in which such body is found, or to a police constable, under a penalty of £5 (*g*) It is then the duty of the parish officer or police constable to give notice to the coroner of the district of the finding of the body so that an inquest may be held thereon (*h*).

(5) Habitual drunkards.

557. In the case of the death of any person detained in any retreat (*i*) a statement of the cause of the death of such person, with the name of any person present at the death, must be drawn up and signed by the principal medical attendant of such retreat, and a copy thereof, duly certified in writing by the licensee of such retreat, must be transmitted by him to *inter alios* the coroner, under a penalty upon summary conviction of £20, or three months' imprisonment with or without hard labour (*j*).

In the case of the death of a patient while absent from a retreat (*k*) under licence, a statement of the cause of his death, with the name of any person present at the death, must be drawn up and signed by a duly qualified medical practitioner, and a copy thereof, duly certified in writing by the person in whose charge the patient had been placed, must be by him transmitted to *inter alios* the coroner of the district under a similar penalty (*l*).

(*f*) Children Act, 1908 (8 Edw. 7, c. 67), ss. 1, 6, 9, repealing and replacing with slight alterations the Infant Life Protection Act, 1897 (60 & 61 Vict. c. 57), ss. 2 (1), 5, 8, 9. The above provisions do not extend to any relative or legal guardian of an infant who undertakes the nursing and maintenance of the infant, or to any person who undertakes the nursing or maintenance of an infant under any Act for the relief of the poor or of any order made under such Act, or to hospitals, convalescent homes, or institutions established for the protection and care of infants, and conducted in good faith for religious or charitable purposes, or boarding schools at which efficient elementary education is provided (*ibid.*, s. 11 (1)). The "relatives" of an infant are the grandparents, brothers, sisters, uncles and aunts, by consanguinity or affinity, and in the case of illegitimate infants the persons who would be so related if the infant were legitimate (*ibid.*, s. 11 (2)). See further, title INFANTS AND CHILDREN.

(*g*) Burial of Drowned Persons Act, 1808 (48 Geo. 3, c. 75), amended by the Burial of Drowned Persons Act, 1886 (49 Vict. c. 20). As to the burial of persons found drowned, see title BURIAL AND CREMATION, Vol. III., pp. 547 *et seq.*

(*h*) This injunction is usually contained in the directions issued by the chief constable of the county to the members of the county constabulary.

(*i*) A "retreat" means a house licensed by the licensing authority for the reception, control, care, and curative treatment of habitual drunkards (Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), s. 3); see further, title INTOXICATING LIQUORS.

(*j*) *Ibid.*, s. 27.

(*k*) Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 19.

(*l*) *Ibid.*

SECT. 1. Duties of Coroners.

(6) Accidents in factories and workshops.

558. Where a death has occurred by accident in a factory or workshop (*m*), the coroner must forthwith advise the district inspector of the time and place of holding the inquest, and, unless an inspector or some person on behalf of the Secretary of State is present to watch the proceedings, the coroner must adjourn the inquest, and must, at least four days before holding the adjourned inquest, send to the inspector notice in writing of the time and place of holding the adjourned inquest.

Provided that, if the accident has not occasioned the death of more than one person and the coroner has sent to the inspector notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the inquest, it is not imperative on him to adjourn the inquest in pursuance of the foregoing provision if the majority of the jury think it unnecessary so to adjourn (*n*).

(7) Railway and tramway accidents.

559. When a coroner holds or is about to hold an inquest on the death of any person occasioned by an accident of which notice for the time being is required by or in pursuance of the Regulation of Railways Act, 1871, to be sent to the Board of Trade, and makes a written request to the Board in this behalf, the Board may appoint an inspector or some person possessing a legal or special knowledge to assist in holding such inquest, and such appointee is to act as the assessor of the coroner and make a report to the Board as in the case of a formal investigation of an accident under that Act (*o*).

A coroner within seven days after holding an inquest on the body of any person who is proved to have been killed on a railway, or to have died in consequence of injuries received on a railway, must make to a Secretary of State, in such form as he may require, a return of the death and the cause thereof (*p*).

(*m*) For the definition of "factory or workshop," see Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 149. As to the law relating to factories and workshops generally, see title FACTORIES AND WORKSHOPS.

(*n*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 21 (1). As to the right of any relative of the deceased, inspector, owner or occupier of the factory, and representative of the workmen to attend the inquest, see p. 259, *post*.

(*o*) Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78), s. 8. So far as concerns coroners, notice of accident is required to be given to the Board of Trade when it occurs in or about any railway or any of the works or buildings connected with a railway, or any building or place, whether open or inclosed, occupied by a company working a railway, and is attended with loss of life; and notice may also be required to be given of accidents of any kind causing loss of life which may be specified in an order of the Board of Trade (*ibid.*, s. 6). By *ibid.*, s. 2, "railway" means the whole or any portion of a railway or tramway, whether worked by steam or otherwise, which has been authorised by any special Act of Parliament or by any certificate under Act of Parliament. The obligation to give notice of accidents is extended to accidents occurring on lines and sidings having a junction with a railway by the Railway Employment (Prevention of Accidents) Act, 1900 (63 & 64 Vict. c. 27), s. 13. For the relations of the Board of Trade to railways generally, see title RAILWAYS AND CANALS.

(*p*) Railway Regulation Act (Returns of Signal Arrangements, Working etc.), 1873 (36 & 37 Vict. c. 76), s. 5.

SECT. 1. Duties of Coroners.

(8) Accidents from explosions and in mines.

560. Where a coroner holds an inquest upon a body of any person whose death shall have been caused (1) by the explosion of any explosive, or by any accident of which notice (*q*) is required by the Explosives Act, 1875 (*r*), to be given to the Secretary of State; or (2) by any explosion or accident of which notice (*s*) is required by the Metalliferous Mines Regulation Act, 1872 (*t*), to be given to the inspector of the district; or (3) by any explosion or accident of which notice (*u*) is required by the Coal Mines Regulation Act, 1887 (*w*), to be given to the inspector of the district, the following provisions must be observed (*x*):—

Special statutory provisions.

(1) The coroner must adjourn the inquest unless an inspector or some person on behalf of a Secretary of State is present to watch the proceedings.

(*q*) Notice is required to be given to the Secretary of State under the Explosives Act, 1875 (38 Vict. c. 17), whenever there occurs any accident by explosion or by fire (1) in or about or in connection with any factory, magazine, or store, or (2) which causes loss of life or personal injury in or about or in connection with any registered premises, or (3) which causes loss of life or personal injury in or about or in connection with any carriage, ship, or boat, either conveying an explosive or on or from which an explosive is being loaded or unloaded (*ibid.*, s. 63). Notices however, sent to a Government inspector under the Act are deemed to have been sent to the Secretary of State (*ibid.*, s. 85). An explosive for the purposes of the above Act means gunpowder, nitroglycerine, dynamite, guncotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect, and includes fog signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined (*ibid.*, s. 3). Loss of life due to the bursting of a gun is not considered by the Home Office to be an accident due to explosion so as to require notice to be given to the Secretary of State (Home Office Circular, 5th February, 1879), and the coroner in such case need not adjourn the inquest. As to the law relating to explosives generally, see title EXPLOSIVES.

(*r*) 38 Vict. c. 17.

(*s*) Notice is required to be given to the inspector of the district under the Metalliferous Mines and the Coal Mines Regulation Acts where in or about any mine, whether above or below ground, any accident occurs which (1) causes loss of life to any person employed in or about the mine; (2) causes any fracture of the head or any limb, or any dislocation of a limb, or any other serious personal injury to any person employed in or about the mine; or (3) is caused by any explosion of gas or coal dust or any explosive, or by electricity, or by overwinding or by any other such special cause as the Secretary of State specifies by order, and causes any personal injury whatever to any person employed in or about the mine (Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 11; Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 35, both of which sections are partially repealed and re-enacted with alterations by the Notice of Accidents Act, 1906 (6 Edw. 7, c. 53), s. 2). The Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), by s. 3, applies to mines of coal, stratified ironstone, shale, and fire-clay, and the Metalliferous Mines Regulation Act, by s. 3, applies to every other mine. As to explosions in mines etc. generally, see titles MINES, MINERALS AND QUARRIES; EXPLOSIVES.

(*t*) 35 & 36 Vict. c. 77, as amended by the Notice of Accidents Act, 1906 (6 Edw. 7, c. 53), s. 2; see note (*s*), *supra*.

(*u*) See note (*s*), *supra*.

(*w*) 50 & 51 Vict. c. 58, as amended by the Notice of Accidents Act, 1906 (6 Edw. 7, c. 53), s. 2.

(*x*) Explosives Act, 1875 (38 Vict. c. 17), s. 65; Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 22; Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 48.

SECT. 1. Duties of Coroners.

(2) The coroner, at least four days before holding the adjourned inquest, must send, in cases under the Explosives Act, 1875 (*y*), to a Secretary of State, or to a Government inspector under that Act, and in other cases to the inspector of the district, notice in writing of the time and place of holding the adjourned inquest.

(3) The coroner before the adjournment may take evidence to identify the body and may order the interment thereof.

When adjournment unnecessary.

(4) If the explosion or accident has not occasioned the death of more than one person, and the coroner has duly sent to the above-mentioned persons respectively notice of the time and place of holding the inquest, in the case of coal mines not less than twenty-four hours and in other cases not less than forty-eight hours before holding the same, it is not imperative upon him to adjourn the inquest as above required, if the majority of the jury think it unnecessary so to adjourn.

Examination by inspectors.

(5) In cases under the Explosives Act, 1875 (*y*), a Government inspector, or person employed on behalf of the Secretary of State, is at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner on points of law, and in other cases under the Coal Mines and Metalliferous Mines Regulation Acts (*a*) an inspector under those Acts may at such inquest examine any witness, subject nevertheless to the order of the coroner.

Notice when inspector not present.

(6) Where evidence is given at an inquest, at which a Government inspector, or person employed on behalf of the Secretary of State, or an inspector (as the case may be) is not present, of any neglect as having contributed to the explosion or accident, or of any defect in or about or in connection with any factory, magazine, store, or registered premises, or any carriage, ship, or boat carrying an explosive, or of any defect in or about the mine (as the case may be) appearing to the jury to require a remedy, the coroner must send to the Secretary of State or Government inspector or to the inspector of the district (as the case may be) notice in writing of such neglect or defect.

Disqualification for jury.

(7) No person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred is qualified to serve on the jury impanelled on the inquest; and it is the duty of the constable or other officer not to summon any person disqualified under this provision, and it is the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Rights of relatives etc.

(8) Any relative of any person whose death may have been caused by the explosion or accident in or about a coal mine with respect to which the inquest is being held, and the owner, agent, or manager of the coal mine in which the explosion or accident occurred, and any person appointed by the order in writing of the majority of the workmen employed at the said mine, is at liberty to attend and examine any witness, either in person or by his counsel, solicitor, or agent, subject nevertheless to the order of the coroner.

Every person who fails to comply with the above provisions with

(*y*) 38 Vict. c. 17.
(*a*) 50 & 51 Vict. c. 58; 35 & 36 Vict. c. 77.

regard to inquests upon deaths occurring by explosion or accident in coal or metalliferous mines is guilty of an offence and liable to penalties (*b*).

SUB-SECT. 3.—*Inquests on Treasure Trove.*

Definition of treasure trove.

561. Treasure trove is where any gold or silver in coin, plate, or bullion is found concealed in a house, or in the earth or other place, the owner thereof being unknown, in which case the treasure belongs to the King or his grantee, being the franchise of treasure trove (*c*). If the treasure was not concealed by the owner, but merely abandoned or lost, it is not treasure trove, and belongs to the first finder as against everyone but the owner (*d*).

Duty of coroner.

Extent of jurisdiction.

562. The duty of a coroner with regard to treasure trove is to go where treasure is said to be found and to issue his warrant for summoning a jury to appear before him in a certain place in the same manner as he issues his warrant for summoning a jury to hold an inquest upon a dead body. The jurisdiction of the coroner and the jury then is to inquire of treasure that is found, who were the finders, and who is suspected thereof (*e*). The coroner has no jurisdiction to inquire into any question of title to the treasure as between the Crown and any other claimant, inasmuch as the title of the Crown to all treasure trove is independent of the finding of the coroner's jury, and can only be displaced by the title of another claimant in separate proceedings instituted for that purpose (*f*). Where there is apparent concealment of treasure trove, it may not be out of place for the coroner's jury to inquire into the title for the purpose of showing that the finding of the treasure was concealed from the supposed owner (*g*); but the finding of the jury, if any, as to the title is traversable, and in an indictment for concealing treasure trove it is not necessary to allege any inquisition before the coroner or office found as to the title of the Crown (*h*).

(*b*) Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 48; Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77),s. 22.

(*c*) Chitty on the Prerogatives of the Crown, p. 152, cited with approval in *A.-G.* v. *Moore*, [1893] 1 Ch. 676, *per* STIRLING, J., at p. 683; also in *A.-G.* v. *British Museum* (*Trustees*), [1903] 2 Ch. 598, *per* FARWELL, J., at p. 608; 3 Co. Inst. 132.

(*d*) *Ibid.*, 1 Bl. Com. 295; *Armory* v. *Delamirie* (1721), 1 Stra. 505; 1 Smith, L. C., 11th ed., 356. As to the position of a finder of lost chattels generally, and as to when the appropriation of them by the finder amounts to larceny, see titles BAILMENT, Vol. I., pp. 528 *et seq.*; CRIMINAL LAW AND PROCEDURE.

(*e*) Stat. "De officio Coronatoris," 1276 (4 Edw. 1, st. 2), which is declaratory of the common law, though repealed by s. 45 of the Coroners Act, 1887 (50 & 51 Vict. c. 71), subject to the reservations therein contained. S. 36 of the latter Act enacts: "A coroner shall continue as heretofore to have jurisdiction to inquire of treasure that is found, who are the finders, and who is suspected thereof, and the provisions of this Act shall, so far as is consistent with the tenor thereof, apply to every such inquest." See also Bract. tit. De Coronâ, l. iii., c. vi., fol. 122; Britton, ed. by Nichols, c. ii., pp. 8, 18, 66; Dalton on the Office of Sheriffs, p. 376.

(*f*) *A.-G.* v. *Moore*, *supra*; and see *A.-G.* v. *British Museum* (*Trustees*), *supra*.

(*g*) Umfreville on the Office and Duty of Coroners, p. 536.

(*h*) *R.* v. *Toole* (1867), 16 W. R. 439; *R.* v. *Thomas and Willett* (1863), 12 W. R. 108.

SECT. 1. Duties of Coroners.

Concealment of treasure trove is a misdemeanour at common law (*i*).

SUB-SECT. 4.—*To act in place of Sheriff.*

Duty to act in place of sheriff.

563. Besides his judicial duty a county coroner has also ministerial authority as a sheriff (*k*), namely, when there is just exception taken to the sheriff, in which case judicial process is awarded to the coroner for the execution of the King's writs and he becomes the *locum tenens vicecomitis* (*l*). When thus acting the coroner has all the powers which may be exercised by the sheriff in executing process (*m*).

When duty arises.

564. If the sheriff is interested upon the trial of an indictment the jury process is properly directed to the coroners of the county (*n*).

If there be two sheriffs, and one only be interested, the writ should be issued to the sheriff who is not interested, and not to the coroner (*o*).

Issue of process to coroners.

565. When process is issued to the coroner in place of the sheriff, the writ or writs are directed to the "coroners" of the county, and if all the coroners be also interested, process is directed to elisors approved by the court or its officer (*p*). But if there be two or more coroners for the county, and only some of them interested, process will be directed to those who are not interested, and not to elisors (*q*).

When process is once awarded to the coroners, the sheriff may not afterwards act in the action (*r*), and all subsequent process in aid of the execution must issue to the coroners, even though the sheriff be meanwhile removed, or there be a new sheriff (*s*).

If there are more than two coroners in a county, and a writ be directed to the "coroners of the county," though one or more die, yet, so long as a plural number remain, a return of the writ by the surviving coroners is good; but if there be only one survivor, he cannot execute the writ and return it until another

(*i*) *R.* v. *Toole* (1867), 16 W. R. 439; *R.* v. *Thomas and Willett* (1863), 12 W. R. 108.

(*k*) For the powers of the sheriff generally, see title SHERIFFS AND BAILIFFS.

(*l*) 4 Co. Inst. 271.

(*m*) Thus, where the sheriff was plaintiff in an action of waste, a writ of estrepment was issued to the coroners of the county commanding them to suffer no waste to be done in the lands etc., and it was said by the court that the coroner himself was to provide against the waste by taking the *posse comitatus* to enforce the writ if necessary (*Cumberland (Earl)* v. *Cumberland (Dowager Countess)* (1615), Hob. 85; and see *Weston* v. *Coulson* (1764), 1 Wm. Bl. 506.

(*n*) *R.* v. *Dolby* (1823), 2 B. & C. 104.

(*o*) *Letsom* v. *Bickley* (1816), 5 M. & S. 144; *R.* v. *Warrington* (1691), 1 Salk. 152; *Rich* v. *Player* (1683), 2 Show. 286.

(*p*) Where a writ of attachment was moved for against the coroners for not attaching the sheriff against whom an attachment directed to the coroners had issued, the writ was granted, to be directed to elisors to be named by the plaintiff and approved by the prothonotary (*Andrews* v. *Sharp* (1773), 2 Wm. Bl. 911).

(*q*) See *Rich* v. *Player*, *supra*.

(*r*) *Corn* v. *Pastow* (1602), Cro. Eliz. 894.

(*s*) Com. Dig. tit. Officer, G, 13.

coroner is appointed (*t*). But if there be two or more coroners in a county, though one of them may execute the writ, the return must be made in the name of them all (*a*).

Right to fees.

566. When a coroner acts in the place of the sheriff, he is entitled to such fees etc. as would have been payable to the sheriff (*b*), it being provided by statute that where any writ, process, or extent whatsoever is directed to and executed by a coroner for a county in the place of a sheriff, the coroner shall, in addition to any salary to which he is entitled, receive the same poundage fees or other compensation or reward for executing the writ, process, or extent, and have the same right to retain and all other remedies for the recovery of the fees, compensation, or reward as the sheriff would have been entitled to and had in whose place such coroner was substituted; and if the fees or compensation payable to the sheriffs are increased by Act of Parliament or otherwise, the coroner will be entitled to such increased fees or compensation (*c*).

Liabilities.

While the coroner is thus entitled to the emoluments of the sheriff when acting in his place, he is also liable to the penalties which the sheriff might incur for negligence or misfeasance. Thus, he may be attached for not executing (*d*) or for not returning (*e*) a writ, or for misconduct or oppression in the office (*f*), and is liable in a civil action for making a false return (*g*) or allowing an escape (*h*). Where the remedy against the coroners is by civil proceedings, then, if the process was issued to the "coroners" of the county, although one or more of the coroners of the county may be in default, nevertheless all the coroners of the county are jointly liable (*i*). But where the remedy is by attachment, that coroner only who is in default is subject to the penalty (*k*).

Lands Clauses Acts.

567. Special provision is made by statute with regard to the substitution of coroners for the sheriff in respect of assessment of compensation by a jury for lands purchased or taken otherwise than by agreement under the Lands Clauses Acts. In ordinary cases the promoters issue their warrant to the sheriff, requiring him to summon a jury for that purpose; but if the sheriff be interested in the matter in dispute, such application is to be made to some coroner of the county in which the lands in question or some part of them are situate. And if all the coroners of such county are

(*t*) 2 Hale, P. C. 56.
(*a*) *Ibid.*; 2 Hawk. P. C., c. 9, s. 45; *R.* v. *Dolby* (1822), cited in Umfreville on the Office and Duty of Coroners, p. 144; *Lamb* v. *Wiseman* (1615), Cro. Jac. 383, Ex. Ch.
(*b*) For the list of such fees, see title SHERIFFS AND BAILIFFS.
(*c*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 15.
(*d*) *Andrews* v. *Sharp* (1773), 2 Wm. Bl. 911.
(*e*) *R.* v. *Peckham* (1778), 2 Wm. Bl. 1218.
(*f*) *Coningsby* (*Lord*) v. *Steed* (1723), 8 Mod. Rep. 192.
(*g*) *Naylor* v. *Sharply* (1675), 1 Mod. Rep. 198.
(*h*) *Taylor* v. *Clarke* (1694), 3 Lev. 399; *Anon.* (1703), 6 Mod. Rep. 37.
(*i*) *Naylor* v. *Sharply*, *supra*, where all six coroners of the county were held jointly liable in damages for making a false return, although only one omitted to make the arrest.
(*k*) *Coningsby* (*Lord*) v. *Steed*, *supra*.

SECT. 1. Duties of Coroners.

also interested, such application may be made to some person having filled the office of sheriff or coroner in such county and who is then living there, and who is not interested in the dispute, preference being given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner has the power in such case, if he think fit, to appoint a deputy or assessor (*l*). Throughout the enactments contained in the Lands Clauses Acts relating to the reference of disputed compensation to a jury, where the term "sheriff" is used, the provisions applicable thereto are to apply to every coroner or other person lawfully acting in his place; and whenever any warrant has been directed to any person other than the sheriff, such sheriff must, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same was directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question are situate (*m*).

SUB-SECT. 5.—*Judgment in Outlawry.*

Outlawry.

568. Process in outlawry (*n*) is carried out by the sheriff up to the time when it becomes necessary to pronounce judgment in outlawry (*o*). This is done at the fifth court (*p*) held after the issue of the writ of exigent, when the defendant has been exacted (*i.e.*, called) for the fifth time and has not appeared. It is the duty of the county coroner to be present at the holding of such court, and to pronounce the judgment against the defaulting defendant (*q*). Such judgment is included by the sheriff in his return to the writ of exigent, and the coroner has no further duty in the matter.

SECT. 2.—*Privileges of Coroners.*

Freedom from arrest.

569. A coroner when engaged in the discharge of his official duty is privileged from arrest (*r*), and this privilege extends also to a deputy coroner (*s*).

(*l*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 39.

(*m*) *Ibid.*, s. 40. As to the Lands Clauses Acts generally, see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 12 *et seq.*

(*n*) Outlawry in civil proceedings was abolished by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), and is very rare now in criminal cases. As to outlawry in general, see title CRIMINAL LAW AND PROCEDURE.

(*o*) See Crown Office Rules, 1906, rr. 88—101, for the various steps to be taken in process of outlawry.

(*p*) This is the old county court of the freeholders of the county at which the county coroners were formerly elected.

This court was held periodically, generally once a month, by the sheriff or by the under-sheriff as his deputy. It is now practically obsolete, the only purposes for which it might possibly be held being for pronouncing judgment in outlawry and, in a modified form, to assess compensation under the Lands Clauses Acts; see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VII., pp. 86 *et seq.*).

(*q*) The judgment is to the following effect: "A. B. being four times called to answer our Sovereign Lord the King according to the tenor of this writ, and not appearing, the coroners of this county by virtue of their office do pronounce him outlawed" (or "waived" if a female).

(*r*) *Callaghan* v. *Twiss* (1847), 9 I. L. R. 422.

(*s*) *Ex parte Middlesex Deputy Coroner* (1861), 6 H. & N. 501.

SECT. 2. Privileges of Coroners.

570. Coroners are exempt from serving on juries (*t*) and are also exempt generally from serving offices which are inconsistent with the duties of coroner (*u*).

Exemption from service on juries.

571. A county coroner is a conservator of the King's peace and becomes a justice of the peace by virtue of his appointment, having power to cause felons to be apprehended whether an inquisition has been found against them or not (*w*), as also those suspected of guilt, or present at the death and not guilty, and also burglars and robbers in respect of whom no inquisition can be taken (*x*); and a coroner may bind any person to the peace who makes affray in his presence (*y*).

As justice of the peace.

SECT. 3.—*Liabilities of Coroners.*

SUB-SECT. 1.—*Removal etc. for Misbehaviour or Inability.*

Removal by Lord Chancellor.

572. The Lord Chancellor may, if he thinks fit, remove any coroner from his office for inability or misbehaviour in the discharge of his duty (*a*). In the county of Lancaster this jurisdiction is exercisable by the Chancellor of the Duchy and County Palatine of Lancaster (*b*). This jurisdiction extends to the removal of franchise coroners as well as of county and borough coroners (*c*). It existed at common law independently of any statute (*d*), and the powers conferred by statute are without prejudice to the previous common law jurisdiction of the Lord Chancellor (*e*).

Application for removal.

The Lord Chancellor's original jurisdiction is evoked either by petition by a public authority in the county, borough, or franchise of which it is desired to remove the coroner (*f*), or by application by any person founded on affidavit for a rule calling on the coroner to show cause why he should not be removed from his office (*g*). The latter course is the one generally taken in modern

(*t*) Juries Act, 1870 (33 & 34 Vict. c. 77), s. 9 and schedule.

(*u*) 2 Roll. Abr. 632, tit. Jurors, s. 4; Fitz. Nat. Brev. 167; Sir J. Jervis on Coroners (1829), p. 63; *Ex parte Jefferies* (1829), 6 Bing. 195, where it was laid down that a person is exempt from serving the office of overseer who holds office under the Crown or otherwise the duties of which require personal attendance for their performance.

(*w*) *Davis* v. *Pembrokeshire Justices* (1881), 7 Q. B. D. 513, where an application was made for a *certiorari* to quash a bastardy order made by justices, of whom one was the coroner for the county, on the ground that the offices of justice and coroner were inconsistent, but the court refused the rule, the passage in the text being cited with approval by GROVE, J., from Stephen's Commentaries, 7th ed., p. 641, dissenting from the contrary opinions expressed in Lambard's Eirenarchia, p. 66; 2 Hawk. P. C., c. 8, p. 48. See also Com. Dig., tit. Justices of Peace, A. 4.

(*x*) Mirror of Justice, c. 1, s. 13; Lambard's Eirenarchia, 378; 2 Hale, P. C. 107.

(*y*) 1 Bac. Abr. 491; Sir J. Jervis on Coroners (1829), p. 21.

(*a*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 8 (1), which corresponds to the repealed County Coroners Act, 1860 (23 & 24 Vict. c. 116), s. 6.

(*b*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 39 (1).

(*c*) *Ibid.*, s. 30 (4).

(*d*) *Ex parte Parnell* (1820), 1 Jac. & W. 451.

(*e*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 35.

(*f*) See *Ex parte Parnell, supra; Re Ward* (1861), 3 De G. F. & J. 700, where the petitioners were freeholders and justices of the county.

(*g*) See *Re Hull* (1882), 9 Q. B. D. 689.

SECT. 3. Liabilities of Coroners.

times. If the coroner in question be a county coroner and the Lord Chancellor decides to remove him, a writ *de coronatore exonerando* issues to the county council commanding them to remove the coroner, and a writ *de coronatore eligendo* also issues commanding them to elect another coroner in his place. The two writs are issued at the same time, and although they do not bear the same date the fiat is put to them on the same day; it is only necessary that the former writ should be executed first (*h*).

It appears that it is not necessary that notice of the petition be given to the coroner, but if the writ is issued to remove him without notice he may have a commission from the Chancery Division of the High Court to inquire whether the cause assigned for his removal is true, though he cannot traverse it (*i*). If upon the return of the commission the suggestion is disproved, a *supersedeas* may be issued commanding the county council to abstain from removing the coroner, or, if he have already been removed, to suffer him to exercise his office as before (*k*). When a county coroner is removed from his office, the accompanying writ *de coronatore eligendo* recites the ground on which the former coroner was removed, and the cause so recited is not traversable (*l*).

Extortion, corruption etc.

573. A coroner who is guilty of extortion or of corruption or of wilful neglect of his duty or of misbehaviour in the discharge of his duty is guilty of a misdemeanour, and in addition to any other punishment may, unless his office of coroner is annexed to any other office, be adjudged by the court before whom he is so convicted to be removed from his office and to be disqualified for acting as coroner, and, if he is a coroner for a county, a writ must issue for an election of another coroner, and if he is a coroner of a borough, the council of the borough, and if he is a coroner for a franchise, the lord or other person or persons entitled to the appointment of the coroner, must forthwith proceed to appoint another coroner as in the case of any other vacancy (*m*).

General power of the court.

574. This provision does not in any manner prejudice or affect the jurisdiction of the High Court of Justice or of any judge thereof in relation to or over a coroner or his duties (*n*). The Court of

(*h*) *Ex parte Parnell* (1820), 1 Jac. & W. 451, *per* Lord ELDON, L.C., at p. 454; *Re Ward* (1861), 3 De G. F. & J. 700.

(*i*) *Ibid.*

(*k*) Fitz. Nat. Brev. 164.

(*l*) *Specot's Case* (1590), 5 Co. Rep. 57 a, 58 b; Fitz. Nat. Brev. 164.

(*m*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 8 (2). This provision takes the place of the repealed enactment 25 Geo. 2, c. 29, s. 6, which provided that, if the court adjudged a county coroner to be removed from his office, a writ should issue for the removing him from his office and electing another in his place, while in the case of any other coroner the person or persons entitled to nomination or appointment of any such coroner should, upon notice of the judgment of removal, nominate and appoint another person to be coroner in his stead. The omission in the present enactment of the provision that a writ shall issue for the removal of a county coroner after the judgment of the court appears to show that the adjudication of the court that he be removed is now sufficient to effect his removal, and that a writ *de coronatore exonerando* from the Lord Chancellor is unnecessary in such case.

(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 35.

King's Bench has always possessed and frequently exercised the jurisdiction of treating misbehaviour on the part of a coroner as contempt of court, and punishing it with imprisonment, fine, or censure (*o*), and such jurisdiction is now exercisable by the King's Bench Division of the High Court (*p*).

When removal discretionary.

575. In cases where a coroner has not been adjudged by a court of law to be removed on conviction of an offence in the conduct of his office amounting to a misdemeanour it is entirely a matter within the discretion of the Lord Chancellor to determine whether the inability or misbehaviour alleged is of such a nature as to require the removal of the coroner.

Inability.

576. There may be several causes of inability. Thus, a coroner may be removed if he have no sufficient knowledge and capacity (*q*); if he be so engaged in other business that he has not sufficient time to attend to his duties (*r*); if he be a *communis mercator* (*s*), which apparently means that he is occupied by other business; if being a county coroner he live in the extreme parts of the county, so that he cannot conveniently exercise his office (*t*); if he be disabled and broken with age or disease (*a*); if he be elected or appointed to some incompatible office, such as sheriff or verderer (*b*); or if, being a county coroner, he have not land in fee sufficient in the same county whereof he may answer to all manner of people (*c*). Imprisonment on civil process for a period of twelve months has been considered a sufficient ground for removal, although the duties of the coroner were meanwhile discharged by another coroner of the same county (*d*).

Delay or refusal to hold inquest.

577. Unnecessary delay in holding an inquest and an improper exercise of judgment in refusing to hold an inquest constitute misbehaviour on the part of a coroner for which he may be removed (*e*). So is neglect of duty, and not merely wilful neglect of duty, but neglect of a different nature, as if one gets another coroner to execute the office for him, by which he is called out of his own district and the inhabitants of one district may be deprived of their coroner (*f*).

(*o*) For examples, see *R.* v. *Wakefield* (1717), 1 Stra. 69; *R.* v. *Stukely* (1701), 12 Mod. Rep. 493; *R.* v. *Atkinson* (1701), 12 Mod. Rep. 496; *R.* v. *Stanlake* (1672), 1 Mod. Rep. 82, where it was laid down that the Court of King's Bench, being supreme coroner, will examine the misdemeanour of any coroner; see p. 254, *post*.

(*p*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34.

(*q*) Fitz. Nat. Brev. 163, N; Com. Dig. tit. Officer, G, 4, where the expression is "if he be *minus idoneus*."

(*r*) *Ibid.*

(*s*) 2 Co. Inst. 32; Com. Dig. tit. Officer, G, 4.

(*t*) Fitz. Nat. Brev. 164; Com. Dig. tit. Officer, G, 4. A county coroner must reside within his district or not more than two miles outside it (Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 5; see p. 219, *ante*), and non-compliance with this statutory qualification would no doubt be considered "inability."

(*a*) Fitz. Nat. Brev. 164; Com. Dig. tit. Officer, G, 4.

(*b*) *Ibid.*

(*c*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 12.

(*d*) *Ex parte Parnell* (1820), 1 Jac. & W. 451.

(*e*) *Re Hull* (1882), 9 Q. B. D. 689; 2 Hale, P. C. 59.

(*f*) *Ex parte Parnell, supra, per* Lord ELDON, L.C., at p. 454.

SECT. 3. Liabilities of Coroners.

Misbehaviour.

578. Several statutes now repealed by the Coroners Act, 1887, specified acts of misbehaviour for which a coroner was made liable to penalties; and such acts would no doubt authorise the removal of the coroner as well as constitute misdemeanours under the Act of 1887. Thus, it was enacted that coroners concealing felonies or not doing their duty through favour to misdoers were to be imprisoned for a year and fined at the King's pleasure (*g*). If the coroner were remiss and did not make inquisition upon persons slain, and did not return the same to the next gaol delivery, he was to forfeit £5 for every default (*h*); and if every coroner did not himself endeavour to do his office upon any person dead by misadventure he was to forfeit 40*s*. (*i*).

Examples.

Among examples of misbehaviour on the part of a coroner which has been visited with removal or other punishment are the following:—Intoxication when the jury had assembled in pursuance of his summons to hold an inquest, and a refusal to hold the inquest after keeping the jury waiting for two hours (*k*); intemperance and being convicted of a criminal offence (*l*); committing a prisoner to gaol for murder after the jury had returned a verdict of accidental death (*m*); making a false return of the inquisition (*n*); recording in the inquisition a verdict different from that found by the jury (*o*); packing or tampering with the jury (*p*); wrongfully refusing to receive evidence in favour of a person accused or suspected (*q*); corruption, either in accepting a consideration not to hold an inquest (*r*) or to favour a person suspected or found guilty by the jury (*s*); exaction in demanding money for performing his office (*t*).

(*g*) 3 Edw. 1, c. 9 (1275).
(*h*) 3 Hen. 7, c. 1 (1487).
(*i*) 1 Hen. 8, c. 7 (1509).
(*k*) *Re Ward* (1861), 3 De G. F. & J. 700.
(*l*) *Ex parte Pasley* (1842), 3 Dr. & War. 34.
(*m*) *R.* v. *Scorey* (1748), 1 Leach, 43, where the Court of King's Bench granted a rule for a criminal information against the coroner.
(*n*) *R.* v. *Wakefield* (1717), 1 Stra. 69, where, on an inquest being held upon a man who had hanged himself, the jury were satisfied that the deceased was lunatic, but on the coroner telling them that the finding of *felo de se* was only matter of course, found accordingly, and the inquisition was so drawn up. Afterwards, learning what the consequences of such a finding would be, the jury applied to the coroner, telling him they were satisfied deceased was lunatic, and desired he would so take their verdict. The coroner thereupon drew up a second inquisition to that effect, but upon a *certiorari* being brought he returned the first inquisition, whereupon the Court of King's Bench committed him.
(*o*) *R.* v. *Marsh* (1700), 3 Salk. 172, where the coroner, having inserted in the inquisition that three persons had been found guilty of murder, whereas only one had been found guilty, was indicted and convicted of forgery.
(*p*) *R.* v. *Stukely* (1701), 12 Mod. Rep. 493, where the coroner, after the jury had been sworn, took one of them off the inquest in order that the others might find a verdict of *non compos mentis*, and the court granted a criminal information against him.
(*q*) *R.* v. *Scorey*, *supra*.
(*r*) *R.* v. *Harrison* (1800), 1 East, P. C. 382.
(*s*) *Bucklhurst's* (*Lord*) *Case* (1663), 1 Kob. 280, where the coroner was removed and fined £100 for favouring the prisoner by retaining the inquisition and not returning it at the next gaol delivery.
(*t*) 3 Co. Inst. 149, where the coroner was committed to prison and fined

It would also appear to be misbehaviour on the part of a coroner to order the disinterment of remains without reasonable excuse for the purpose of holding an inquest thereon (*a*).

SUB-SECT. 2.—*Imposition of Fine or Costs on Coroner.*

Failure to deliver inquisition etc.

579. If a coroner fails to comply with the statutory provisions with respect to the delivery of the inquisition, or to the taking and delivery of the depositions and recognisances, in the case of murder or manslaughter, the court to whose officer the inquisition, depositions, and recognisances ought to have been delivered may, upon proof of the said non-compliance, in a summary manner impose such fine upon the coroner as to the court seems meet (*b*).

New inquest.

If a coroner refuses or neglects to hold an inquest which ought to be held, or if an inquest has been held by a coroner and by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or otherwise it is necessary or desirable in the interests of justice that another inquest should be held, the High Court, upon application made by or under the authority of the Attorney-General, may order an inquest or a new inquest to be held, and may order the coroner to pay such costs of and incidental to the application as to the court may seem just (*c*).

Failure to summon medical evidence.

If a coroner fail to comply with the requisition of a majority of the jury to summon as further medical evidence some legally qualified medical practitioner named by them, and to direct a post-mortem examination of the deceased with or without an analysis of the contents of the stomach or intestines to be made by such medical practitioner, he is guilty of a misdemeanour (*d*).

SUB-SECT. 3.—*Not to act as Solicitor and Coroner in same Case.*

Duty not to act as solicitor.

580. A coroner may not by himself or his partner, directly or indirectly, act as solicitor in the prosecution or defence of a person for an offence for which such person is charged by an inquisition taken before him as coroner, whether such person is tried on that inquisition or on any bill of indictment found by a grand jury (*e*). If a coroner acts in contravention of this provision he is to be deemed guilty of misbehaviour in the discharge of his duty (*f*). Moreover, the court before whom such person is tried may impose on a coroner appearing to the court to act in contravention of this provision such fine not exceeding £50 as to the court seems fit (*g*).

for refusing to view a body unless paid a fee therefor to which he was not entitled.

(*a*) *R.* v. *Bond* (1717), 1 Stra. 22; *R.* v. *Clerk* (1702), 1 Salk. 377.

(*b*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 9; for the statutory provisions see *ibid.*, ss. 4, 5, and p. 290, *post.*

(*c*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6 (1); see p. 287, *post.*

(*d*) *Ibid.*, s. 21(3); see p. 269, *post.*

(*e*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 10 (1).

(*f*) *Ibid.*, s. 10 (2).

(*g*) *Ibid.*, s. 10 (3).

SECT. 3. Liabilities of Coroners.

SUB-SECT. 4.—*Penalties under Special Statutes.*

Special statutory penalties.

581. Coroners are also made liable to penalties by various statutes which impose upon them special duties as to the holding and conduct of inquests in the particular cases of deaths caused by accidents in mines (*h*).

SUB-SECT. 5.—*For Acts in Excess of Jurisdiction.*

Excess of jurisdiction.

582. As the coroner's court is a court of record, of which the coroner is judge, no action will lie against the coroner for any matter within his jurisdiction done by him in the exercise of his judicial functions (*i*). The coroner, however, may be liable in damages in respect of acts done by him in excess of or without jurisdiction (*k*).

Part IV.—Inquests.

SECT. 1.—*Proceedings at Inquest.*

SUB-SECT. 1.—*Where and when to be held.*

Place of inquest within coroner's jurisdiction.

583. With the exception hereinafter appearing, the inquest must be held at some place within the jurisdiction of the coroner holding the same (*l*), but it is not necessary that all the proceedings should be taken at the same place. Thus, the body may be viewed at one place and the evidence taken and inquisition drawn up at another (*m*), provided that all such places are within the jurisdiction of the coroner; for if they are not, the inquisition may be quashed (*n*). It is, however, entirely within the discretion

(*h*) Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 48; see p. 246, *ante*; Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 22; see p. 246, *ante*.

(*i*) *Floyd* v. *Barker* (1607), 12 Co. Rep. 23, 24; *Hamond* v. *Howell* (1675), 1 Mod. Rep. 184; *Thomas* v. *Churton* (1862), 2 B. & S. 475, where it was held that a coroner duly holding an inquest was not liable to an action for words falsely and maliciously spoken by him in his address to the jury, *dubitante* COCKBURN, C.J., if the coroner spoke maliciously and without reasonable and probable cause; *Garnett* v. *Ferrand* (1827), 6 B. & C. 611, where it was held that no action lay against a coroner for turning a person out of a room in which he was about to hold an inquest.

(*k*) *Foxhall* v. *Barnett* (1853), 23 L. J. (Q. B.) 7, where, a coroner's jury having returned a verdict of manslaughter against the plaintiff, who was committed to gaol on the coroner's warrant, the inquisition was subsequently quashed for want of jurisdiction, and the plaintiff brought an action of trespass against the coroner and recovered damages for the false imprisonment and also for the costs incurred by him in getting the inquisition quashed.

(*l*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7; see pp. 219 *et seq.*, *ante*.

(*m*) 2 Hawk. P. C., c. 9, s. 25.

(*n*) *R.* v. *Hinde* (1844), 5 Q. B. 944, where a person was found drowned in a river within the concurrent jurisdiction of the coroner for a borough and the Admiralty coroner, and, the body being taken to a place beyond the limits of the

of the coroner to fix the particular place for holding the inquest, provided that the place selected is within his jurisdiction. But a coroner's inquest may not be held on licensed premises where other suitable premises have been provided for such inquests (*o*).

Inquests in London.

584. In the administrative county of London the county council is bound to provide and maintain proper accommodation for the holding of inquests, and may, by agreement with a sanitary authority, and on such terms as may be agreed on with such authority, provide and maintain the same in connection with a mortuary or a building for post-mortem examinations provided by that authority, or with any building belonging to that authority (*p*).

Buildings in London for unidentified bodies.

The exception referred to is a statutory provision with regard to unidentified bodies found in London and removed to a building which may be provided for the reception of such bodies. The London County Council are empowered to provide and fit up one or two suitable buildings to which dead bodies found in London, and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may, on the order of a coroner, be removed, and in which they may be retained and preserved with a view to the ultimate identification of the bodies (*q*). A Secretary of State may make regulations as to (1) the manner in which and conditions subject to which any such bodies may be removed to such building, and the payments to be made at such building to persons bringing any unidentified body for reception; (2) the fees and charges to be paid upon the removal or interment of any such dead body which has been identified after reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same; and (3) the disposal and interment of such bodies (*r*); and subject to and in accordance with such regulations, any such body found in London may, on the order in writing of the coroner holding or having jurisdiction to hold the inquest on the same, be removed to any such building, and the inquest on any such body is then to be held by the same coroner and in the same manner as if such building were within the district of such coroner (*s*). Thus, although the coroner will in such case hold the main portion of the inquest in his own district, the view of the body may take place outside his district.

borough, it was held that the coroner and jury for the borough could not view the body at such place for the purpose of the inquest.

(*o*) Licensing Act, 1902 (2 Edw. 7, c. 28), s. 21.

(*p*) Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 92. It does not appear, however, that the provision of such accommodation deprives the coroner of his discretion to hold the inquest elsewhere, if he thinks it more convenient—as, for instance, in a room in the house where the dead body lies. But the county council would no doubt disallow any expenses incurred by the coroner unreasonably holding the inquest elsewhere than in the court provided for the purpose. As to the provision of mortuaries etc. in London and elsewhere, see title BURIAL AND CREMATION, Vol. III., pp. 564 *et seq.*

(*q*) Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 93 (1). The London County Council has not, however, so far, provided any such building.

(*r*) *Ibid.*, s. 93 (2).

(*s*) *Ibid.*, s. 93 (4).

SECT. 1. Proceedings at Inquest.

585. As the holding of an inquest is a judicial act, an inquest may not be held upon a Sunday, which is *dies non juridicus* (*t*).

SUB-SECT. 2.—*Who may attend.*

Discretion to exclude public.

586. The court of the coroner being a court of record, of which the coroner is judge, *primâ facie* the proceedings therein are open to the public. It is indeed the duty of all persons acquainted with the circumstances attending the subject of an inquest to present themselves at the court for the purpose of giving evidence. Cases, however, may occur in which privacy may be requisite for the sake of decency, or may be due to the family of the deceased, or where matters must be disclosed to the jury the publication of which to the world at large might be productive of mischief without any possibility of good. The coroner, therefore, has a discretion in all inquests *super visum corporis* to determine whether the public generally or any individual persons shall be admitted to or excluded from the court; and as the exercise of this discretion is a judicial function of the coroner as a judge of a court of record, no action will lie against him for excluding or causing the removal of any person from the court or room where such inquest is being held (*u*).

Attendance of counsel etc.

587. It is the practice for coroners to allow counsel or solicitors representing parties who may be interested in the inquest to be present and to question witnesses either by way of examination or cross-examination, but it appears to be within the discretion of the coroner to refuse such permission (*w*). It is not the practice of coroners to allow counsel to make a speech to the jury. If, however, a coroner refuse to allow counsel representing the personal representatives of the deceased to examine or cross-examine witnesses, and the jury find that the deceased was *felo de se*, the King's Bench Division may for that reason refuse to allow the inquisition to be filed (*x*), and would now probably quash it.

Explosion in mines.

588. At all inquests held upon persons employed in or about a coal mine and killed by explosion or accident in connection therewith a statutory right is given to certain persons to attend the

(*t*) *Mackalley's Case* (1611), 9 Co. Rep. 65 b, 66 b; *Hoyle* v. *Cornwallis* (*Lord*) (1719), 1 Stra. 387, where it was held that the execution of a writ of inquiry on a Sunday is void upon the evidence of the almanac without being assigned for error. As to what acts may not be done upon a Sunday, see title TIME.

(*u*) *Garnett* v. *Ferrand* (1827), 6 B. & C. 611. Previous to this case, in which the question of the right of the public to be present in court was definitely raised and decided, opinions had been expressed by BLACKSTONE, J., in *Scott* v. *Shearman* (1775), 2 Wm. Bl. 977, at p. 981, by Lord MANSFIELD, C.J., in *R.* v. *Killinghall* (1756), 1 Burr. 17, and Lord KENYON, C.J., in *R.* v. *Eriswell* (*Inhabitants*) (1790), 3 Term Rep. 707, that the public had the right of access to the coroner's court.

(*w*) This appears to follow from the decision in *Garnett* v. *Ferrand*, *supra*.

(*x*) *Barclee's Case* (1658), 2 Sid. 90, 101, where the main reason for the court in that case refusing to allow the information to be filed, instead of giving permission to traverse the inquisition, was that the court considered that a coroner's inquisition of *felo do se* was not traversable, an opinion now no longer held; see p. 279, *post*.

inquest, namely, (1) the inspector or some person deputed by the Home Secretary, (2) any relative of the dead person, (3) the owner, agent, or manager of the mine, and (4) any person appointed by the order in writing of the majority of the workmen employed at the mine; and of these the inspector personally, and the other persons either personally or by counsel, solicitor, or agent, may examine any witness, subject nevertheless to the order of the coroner (*y*). If the dead person was employed in or about a metalliferous mine, the inspector or some person deputed by the Home Secretary may attend, and the inspector may examine any witness subject to the order of the coroner (*a*).

Accidents in factories etc.

So also any relative of any person whose death has been caused by accident in a factory or workshop and with respect to which an inquest is held, and any inspector, and the occupier of the factory or workshop in which the accident occurred, and any person appointed by the order in writing of the majority of the workpeople employed in the factory or workshop, may attend the inquest and, either in person or by counsel, solicitor, or agent, examine any witness, subject nevertheless to the order of the coroner (*b*).

Committal for contempt.

589. As the judge of a court of record the coroner has power to commit for contempt of court, but, as his court is an inferior court of record, his power is limited in this respect to contempt committed in the face of the court, and does not extend to contempt committed out of court (*c*).

SUB-SECT 3.—*The Jury.*

Summoning of jury.

590. The coroner, having decided to hold an inquest, must issue his warrant for summoning not less than twelve nor more than twenty-three good and lawful men to appear before him at a certain time and place, there to inquire as jurors touching the death of the person on whose body the inquest is to be held (*d*).

By the statute "De officio Coronatoris" (*e*), which is declaratory and in affirmance of the common law, the coroner is directed to go to the places where any be slain or suddenly dead, or wounded, or where treasure is said to be found, and forthwith command four of the next towns, or five or six, to appear before him in such a place. This command takes the form of a warrant, which is in practice directed

(*y*) Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 48; see p. 246, *ante*.

(*a*) Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 22; see p. 246, *ante*.

(*b*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 21 (2); see p. 244, *ante*.

(*c*) See *R.* v. *Lefroy* (1873), L. R. 8 Q. B. 134. As to the coroner's court being a court of record, see p. 211, *ante*; and as to contempt of court generally, see title CONTEMPT AND ATTACHMENT, Vol. VII., pp. 280 *et seq.*

(*d*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 3.

(*e*) 4 Edw. 1, stat. 2 (1276), now repealed (subject to certain saving clauses) by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 45. The provision as to summoning the four, five, or six next towns is, however, merely directory, and not part of the common law (*R.* v. *Crosse* (1664), 1 Sid. 204; *Barclee's Case* (1658), 2 Sid. 144; *Pettus'* (*Sir Thomas*, or *Sir John*) *Case* (1670), 2 Keb. 705, 733).

SECT. 1. Proceedings at Inquest.

to the coroner's special officer, if there be one, and, if not, to the constable of the parish, township, or place where the dead body is, and also usually (though in strictness this is not necessary) to the constables of the next adjoining parishes (*f*), but in such case it is delivered only to the constable of the place where the dead body is. The special officer or the constable to whom the warrant is delivered then makes out his under-precept to the constables of the other parishes specified in the warrant to summon a specified number of able and sufficient men from each of the several parishes to appear as jurymen before the coroner at a certain time and place. If possible, the summons on the individual juror should be served personally on him, but it may be served by leaving it at his dwelling-house with some member of his family. The coroner should not personally interfere with the summoning of the jurors, as such interference may be a reason for quashing the inquisition (*g*).

The jurors on an inquest held by the coroner of the King's household consist of officers of the King's household to be returned by such officer of the household as may be directed to summon the same by the warrant of the coroner (*h*).

Persons who must not be summoned.

591. There are statutory provisions which prohibit certain specified persons from acting as jurors where an inquest is held on the body of any person dying in prison (*i*), or of any person employed in or about a coal mine or metalliferous mine who has been killed by any explosion or accident in connection therewith (*k*).

Failure of person summoned to attend.

592. If any person duly summoned as a juror at an inquest does not, after being openly called three times, appear to such summons, or, appearing, refuses without reasonable excuse to serve as a juror, the coroner may impose on such person a fine not exceeding £5 (*l*).

At common law a coroner had no power to impose any fine, but if no return were made to the coroner's warrant, or if jurors who were summoned did not attend in obedience to the summons, or, appearing, refused to serve, the coroner returned the defaulters to the assizes or sessions, there to be amerced for their default (*m*). It appears that a coroner may still act in this manner in the case of defaulting officers, constables, or jurors, notwithstanding the statutory power which he now possesses of fining defaulting jurors,

(*f*) It is stated by Dalton, on the Office of Sheriffs, c. 100, that "coroners by the common law may make and direct their precepts and warrants to the sheriff for returning of juries before them, and may also assess and set a fine upon the sheriff for not returning of a panel or jury before them."

(*g*) *Re Mitchelstown Inquisition* (1888), 22 L. R. Ir. 279.

(*h*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 29 (3).

(*i*) *Ibid.*, s. 3 (2); see p. 241, *ante*.

(*k*) Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 48 (7); Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 22 (7); see p. 246, *ante*.

(*l*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 19 (1). For the mode of enforcing such fine, see p. 266, *post*.

(*m*) 2 Co. Inst. 136; 2 Hale, P. C. 62; Bro. Abr. tit. Fine for Contempt, pl. 18.

but he cannot fine a juror and also return him for punishment at the sessions or assizes (*n*).

Qualification of jurors.

593. The jurors must be "good and lawful men" (*o*). No man who has been attainted of felony or treason or convicted of any crime that is infamous, unless he has obtained a free pardon, nor any man who is under outlawry, is qualified to serve on juries or inquests in any court or on any occasion (*p*). Aliens having been domiciled in England or Wales for ten years or upwards, if in other respects duly qualified, are liable to serve on juries and inquests as if they had been natural-born subjects, but save as aforesaid no man not being a natural-born subject is qualified to serve on juries or inquests in any court or on any occasion whatever (*q*). If aliens, convicts, or outlaws are on the jury, that is a good plea to avoid the inquisition (*r*).

No man is liable to be summoned or impanelled to serve as a juror in any county in England and Wales, or in London, upon any inquest or inquiry taken or made by or before any coroner by virtue of a writ of inquiry who is not duly qualified to serve as a juror upon trials at *nisi prius* in such county or in London respectively; but this provision does not extend to any inquests taken by or before any coroner of a county by virtue of his office, or to any inquest or inquiry taken or made before any coroner of any liberty, franchise, city, borough, or town corporate not being counties, or of any city, borough, or town being counties of themselves, and coroners in all counties, when acting otherwise than under a writ of inquiry, and coroners in all such places as are above mentioned, shall and may take and make all inquests and inquiries by jurors of the same description as they used to do before the Juries Act, 1825 (*s*).

Exemptions.

594. Certain classes of persons are, however, exempted by statute from serving upon any juries whatsoever, and such exemption extends to service upon coroners' juries (*t*).

But, although such exemptions from service apply to coroners' juries, the rules with regard to the selection, the mode of summoning, and the personal qualification of jurors upon the trial of actions at *nisi prius* do not apply to jurors upon coroners' juries at inquests, and any man within the coroner's jurisdiction is therefore liable to serve upon such jury who is not disqualified as above stated, or exempted by statute, and to whom the epithet "good and lawful" can properly be applied (*a*). There is no statutory limit of age for such jurors, but the practice is not to summon persons

(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 19 (3).
(*o*) See Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 3 (1); and p. 239, *ante*.
(*p*) Juries Act, 1870 (33 & 34 Vict. c. 77), s. 10.
(*q*) *Ibid.*, s. 8. As to aliens generally, see title ALIENS, Vol. I., pp. 302 *et seq.*
(*r*) 2 Hale, P. C. 60, 155; *Withipole's (Sir William) Case* (1628), Cro. Car. 134; Sir J. Jervis on Coroners (1829), p. 223.
(*s*) Juries Act, 1825 (6 Geo. 4, c. 50), s. 52.
(*t*) *Re Dutton*, [1892] 1 Q. B. 486. For the classes of persons who are exempted from serving upon juries, see title JURIES.
(*a*) *Re Dutton, supra.*

SECT. 1. Proceedings at Inquest.

under the age of twenty-one (*b*). Nor is there any statutory area from which the jurors in any particular case are to be summoned, but the statutory form of inquisition which describes the jurors as being "good and lawful men of the said [county, *or as the case may be*] duly sworn" etc. implies that the jurors must be taken from the district within the jurisdiction of the coroner who is about to hold the inquest, and the practice is to summon jurors only from the immediate neighbourhood of the place where the inquest will be held (*c*).

Number to be summoned.

595. Not less than twelve jurors must be summoned, and, as it is necessary that at least twelve should agree on a verdict (*d*), it is usual and proper to summon more than twelve to avoid the risk of having to adjourn the inquest, even if it is not considered necessary to summon the full number of twenty-three.

Opening of court.

596. When the coroner arrives at the place indicated for holding the inquest, the officer or officers who have executed the coroner's warrant and any sub-warrants for summoning the jury return the list or lists of the names of the jurors summoned by him or them, and the coroner indorses the return on his warrant, which is subscribed by the different officers. The court is opened by proclamation (*e*) and the names of the jury called over. If an insufficient number appear, proclamation is made a second time (*f*), and if there are still insufficient, the coroner may direct an officer forthwith to summon other good men from the neighbourhood until a sufficient number is obtained.

Swearing of jury.

597. When not less than twelve jurors are assembled they must be sworn by the coroner (*g*) diligently to inquire touching the death of the person on whose body the inquest is about to be held and a true verdict to give according to the evidence (*h*). No challenge can be made of any of the jurors (*i*). It is not necessary

(*b*) By the Statute of Marlborough (1267) (52 Hen. 3, c. 24), repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125), all persons of over twelve years of age could be summoned.

(*c*) By stat. "De officio Coronatoris," 1276 (4 Edw. 1, st. 2), cited at p. 259, *ante*, repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71), the coroner was "forthwith to command those of the next four towns or five or six to appear before him." For the statutory form of inquisition, see Coroners Act, 1887 (50 & 51 Vict. c. 71), Sched. II., Form No. 3; and p. 277, *post*.

(*d*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (5); *Cobat's Case* (1368), 2 Hale, P. C. 161, n.

(*e*) The old and usual form of proclamation is "You good men of this county [*or as the case may be*] summoned to appear here this day to inquire for our Sovereign Lord the King, when, how, and by what means A. B. came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon."

(*f*) Thus: "You good men who have been already severally called and have made default, answer to your names and save your peril."

(*g*) No person other than the coroner or his deputy holding the inquest has authority to administer the oath (*R.* v. *Ferrand* (1819), 3 B. & Ald. 260, *per* BAYLEY, J., at pp. 262, 263).

(*h*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 3 (3). After a jury has been summoned the coroner is bound to go on with the inquest, and cannot dismiss the jury without doing so (*Re Ward* (1861), 3 De G. F. & J. 700).

(*i*) *R.* v. *Ingham* (1864), 5 B. & S. 257, *per* BLACKBURN, J., at p. 276.

that the jury should be sworn *super visum corporis*, nor that they should all be sworn at the same time (*k*); but a juror may not be sworn after evidence has been given which he has not heard, and if that is done the inquisition is liable to be quashed (*l*).

Affirmation.

The provisions of the Oaths Act, 1888 (*m*), allowing an affirmation to be made by any person who objects to being sworn on the ground of his having no religious belief, or that the taking an oath is contrary to his religious belief, and allowing any person to be sworn with uplifted hand in the Scotch fashion, apply to the swearing of jurors and witnesses upon an inquest in the coroner's court.

SUB-SECT. 4.—*View of the Body.*

Necessity of viewing the body.

598. When the jury have been sworn, the coroner and the jury must at the first sitting of the inquest view the body (*n*). An inquest by a coroner held without view of the body is wholly irregular and extra-judicial, and any inquisition founded thereon is void (*o*), except where the inquest is held in pursuance of an order of the High Court of Justice, in which case it is not necessary to view the body unless the order of the court specifically so directs (*p*).

If the body have been interred before the coroner come, he must cause it to be disinterred, and this he may lawfully do within any convenient time, not only for the purpose of taking an inquest where none has been taken before, but also for taking a good one where an insufficient one has been already taken, or where the first inquisition has been quashed (*q*). But in the latter case he may only disinter the body by order of the King's Bench Division, and the court will exercise its discretion according to time and circumstances whether he shall do it or not (*r*).

As a coroner cannot hold an inquest without a view of the body, it is a misdemeanour to bury or otherwise dispose of the body of a person who has died a sudden or violent death so as to prevent an inquest being held thereon (*s*). So, too, if a dead body in a prison

(*k*) *R.* v. *Ingham* (1864), 5 B. & S. 257; though the contrary opinion was expressed in *R.* v. *Ferrand* (1819), 3 B. & Ald. 260.

(*l*) *R.* v. *Yorkshire Coroner* (1863), 9 L. T. 424. By the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 37 and Sched. II., the following form of oath is prescribed: "You shall diligently inquire and a true presentment make of all such matters and things as are here given you in charge on behalf of our Sovereign Lord the King, touching the death of C. D., now lying dead, of whose body you shall have the view, and shall, without fear or favour, affection, or illwill, a true verdict give according to the evidence, and to the best of your skill and knowledge."

(*m*) 51 & 52 Vict. c. 46.

(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (1). It was formerly held necessary to swear the jury in view of the body (*R.* v. *Ferrand, supra*), but this was held to be unnecessary even before the Act of 1887 (*R.* v. *Ingham, supra*.

(*o*) *R.* v. *Ferrand, supra; R.* v. *Carter* (1876), 45 L. J. (Q. B.) 711.

(*p*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6 (3); see p. 287, *post*.

(*q*) 2 Hawk. P. C., c. 9, s. 23. The common law power of a coroner to cause a dead body to be disinterred for the purpose of holding an inquest thereon is not, it is submitted, limited or controlled in any way by the provision of s. 25 of the Burial Act, 1857 (20 & 21 Vict. c. 81), which requires the licence of the Home Secretary for the removal of a body.

(*r*) *R.* v. *Saunders* (1718), 1 Stra. 167; *Anon.* (1722), 1 Stra. 533.

(*s*) *R.* v. *Bond* (1716), 1 Stra. 22; *R* v. *Clerk* (1702), 1 Salk. 377, also reported

SECT. 1. Proceedings at Inquest.

or other place whereon an inquest ought to be held be interred or suffered to lie so long that it putrefy before the coroner has viewed it, the gaoler or township may be amerced (*t*).

If a coroner has given notice that he intends to hold an inquest on a body, a medical referee, appointed in pursuance of the Cremation Regulations, 1903, may not allow cremation of the body to take place until the inquest has been held, under a penalty of £50 (*u*).

Place where view must be taken.

599. Although it is not necessary that the other proceedings in the inquest should be had in the same place as that in which the body is viewed, the view must be had within the jurisdiction of the coroner holding the inquest (*a*).

What amounts to a view.

600. A casual glance at the face of the dead body is not a sufficient view to give the coroner authority to proceed with the inquest. He should have an opportunity of seeing whether there are any marks of violence and of ascertaining from the appearance of the body what was the occasion of the death of the deceased (*b*).

Inquest where view cannot be had.

601. If a body cannot be found, or have lain so long before the coroner views it that he cannot be assisted from the view in the taking of the inquest, or if there be danger of infecting people by disinterring it, the inquest ought not to be taken by the coroner (unless he has a special writ or commission for that purpose), but by justices of peace or assize authorised to inquire of felonies, who may take the inquest on the testimony of witnesses without a view of the body (*c*). And if a coroner hold an inquest on the body of a person who has been so long dead that the view of it could be of no manner of use for the information of the jurors, the court into which the inquisition is returned will in its discretion refuse to receive or file it upon affidavit of the whole circumstances of the proceeding (*d*), or will order the inquisition to be traversed (*e*).

SUB-SECT. 5.—*Witnesses and Evidence.*

Witnesses to be examined.

602. After the view it is the duty of the coroner to examine on oath (*f*) touching the death all persons who tender their evidence respecting the facts and all persons having knowledge of the facts whom he thinks it expedient to examine (*g*). Witnesses whose

sub nom. Anon., 7 Mod. Rep. 10; *R.* v. *Price* (1884), 12 Q. B. D. 247; *R.* v. *Stephenson* (1884), 13 Q. B. D. 331.

(*t*) 2 Hawk. P. C., c. 9, s. 23.

(*u*) Cremation Act, 1902 (2 Edw. 7, c. 8), s. 8; Cremation Regulations, 1903, r. 12 (7). By s. 10 of the Act, nothing therein is to interfere with the jurisdiction of any coroner.

(*a*) *R.* v. *Hinde* (1844), 5 Q. B. 944; see p. 256, *ante*.

(*b*) *R.* v. *Ferrand* (1819), 3 B. & Ald. 260, *per* BEST, J., at p. 264.

(*c*) 3 Hawk. P. C., c. 9, s. 23; *R.* v. *Bunney* (1688), 1 Salk. 190; *R.* v. *Parker* (1675), 2 Lev. 140.

(*d*) 2 Hawk. P. C., c. 9, s. 24; *R.* v. *Bond* (1716), 1 Stra. 22, where the court ordered a stay of filing an inquisition of *felo de se*, it appearing upon affidavit that the man died five years before, and the coroner dug up a skull which he assured the jury he knew by a particular mark to be that of the deceased.

(*e*) *R.* v. *Clerk* (1702), 1 Salk. 377, where seven months had elapsed since the death.

(*f*) The coroner himself should examine each witness. When he has done so, any person interested may personally or by counsel, with the permission of the coroner, put further questions to any witness.

(*g*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (1). It is the practice for the

testimony is in favour of any person accused or suspected must be examined equally with witnesses whose testimony may be adverse (*h*); and where the inquest is held upon the body of a person dying by his own hand, any evidence offered to show that the deceased was *non compos mentis* at the time of his death must be received as well as that tending to show that he was *felo de se* (*i*).

Refusal to receive evidence.

603. A refusal by the coroner to receive evidence in favour of a person accused or suspected may be ground for filing an information against him for misconduct (*k*) or for quashing the inquisition and ordering a new inquest to be held (*l*). A coroner has no right to exclude or refuse to receive evidence material to the matter under investigation which may be tendered by any person on the ground that such person may thereby criminate himself.

Warning against incrimination.

No person before a coroner can be considered as a person accused, and if anyone tenders evidence which appears likely to criminate himself, he should be warned by the coroner at the time that he is not bound to criminate himself, but if he persists his statement must be taken (*m*).

Unsworn evidence.

604. Notwithstanding the statutory direction that the coroner shall take evidence on oath, a *certiorari* will not be granted to bring up and quash an inquisition on the ground that evidence not on oath was received, unless it clearly appears that actual mischief has occurred from the reception of such evidence (*n*).

Evidence of jury.

605. Formerly the jury might from their own knowledge of the facts have returned a verdict without any witnesses being called before them. But this is not now the practice, and if a juryman is personally acquainted with the facts of the case, he should be sworn as a witness and give his evidence on oath before his fellows (*o*). It is, indeed, more proper that any person summoned as a juryman who has a personal knowledge of the facts should so inform the coroner, and that the coroner should not swear him on the jury, but call him as a witness (*p*).

Compelling attendance of witnesses.

606. If the coroner has reason to believe that some person can give information which will assist the jury in arriving at their verdict, and such person neglects or refuses to attend the inquest and

coroner's officer to make proclamation in court calling upon all persons who can give evidence when, how, and by what means the deceased came by his death to come forward and they shall be heard.

(*h*) *Scorey's Case* (1748), 1 Leach, 43; *R.* v. *Colmer* (1864), 9 Cox, C. C. 506; although in the time of Lord Hale it was usual only to take evidence for the Crown before the coroner (*R.* v. *Parker* (1675), 2 Lev. 140).

(*i*) *Barclee's* (*or Barkley's*) *Case* (1658), 2 Sid. 90, 101; 2 Hale, P. C. 60. The reason which actuated coroners in past times in shutting out evidence in favour of the deceased, namely, that if found *felo de se* his goods were forfeit to the Crown, has, of course, now ceased to operate; see title CRIMINAL LAW AND PROCEDURE.

(*k*) *Scorey's Case*, *supra*.

(*l*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6 (1) (b); see p. 287, *post*.

(*m*) *Wakley* v. *Cooke* (1849), 4 Exch. 511, 516, 518.

(*n*) *R.* v. *Ingham* (1864), 5 B. & S. 257; *R.* v. *Staffordshire Coroner* (1864), 10 L. T. 650; see p. 285, *post*.

(*o*) *Anon.* (1702), 1 Salk. 405; *Bennett* v. *Hartford* (*Hundred*) (1650), Sty. 233; *Fitzjames* v. *Moys* (1663), 1 Sid. 133.

(*p*) Sir J. Jervis on Coroners (1829), p. 228.

SECT. 1. Proceedings at Inquest.

give evidence, the coroner has authority by virtue of his office to issue a summons commanding such person to attend and give evidence (*q*); and if any person being thus duly summoned to give evidence at the inquest does not, after being openly called three times, appear to such summons, or, appearing, refuses without lawful excuse to answer a question put to him, the coroner may impose on such person a fine not exceeding forty shillings (*r*). This statutory power of imposing a fine on a witness, which did not exist at common law (*s*), is in addition to and not in derogation of any power the coroner may possess independently of such statutory power of compelling any person to appear and give evidence before him on any inquest or other proceeding, or of punishing any person for contempt of court in not so appearing and giving evidence, with this qualification, that a person may not be fined by the coroner under his statutory power and also punished under the power of a coroner independently of the statute (*s*).

Enforcement of fines.

607. Where a coroner imposes a fine upon a person (whether juror or witness) he must sign a certificate describing such person and stating the amount of the fine imposed and the cause of the fine, and send such certificate to the clerk of the peace for the county or place in which such person resides on or before the first day of the quarter sessions then next ensuing, and must twenty-four hours at least before that day cause a copy of such certificate to be served upon the person fined by leaving it at his residence, and the clerk of the peace must copy every fine so certified on the roll on which fines and forfeitures imposed at the said quarter sessions are copied, and the same are to be estreated, levied, and applied in like manner and subject to the like powers, provisions, and penalties in all respects as if such fine had been part of the fines imposed at the said quarter sessions (*a*).

Attendance of persons in custody.

608. If a person whom the coroner requires to attend at the inquest either for purposes of identification or as a witness is already in custody, a summons from the coroner would not be effective for procuring his attendance. In such a case the King's Bench Division might grant a *habeas corpus* at the instance of the coroner, directed to the governor of the gaol, to remove the body of the prisoner and to bring him before the coroner, but the court will not do so unless it be clearly shown that by no other means could the result required be attained (*b*).

Arrest of witnesses.

609. If a person summoned as a witness refuses or neglects to attend, the coroner may issue his warrant to the constables within

(*q*) The summons is delivered to the coroner's officer or a constable for service and should be served personally on the person summoned.

(*r*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 19 (2).

(*s*) *Ibid.*, s. 19 (3); and see Chitty, Criminal Law, Vol. I., p. 164. As to contempt of court generally, see title CONTEMPT OF COURT, Vol. VII., pp. 279 *et seq.*

(*a*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 19 (4). The provisions of this sub-section are by s. 19 (5) applied to the forfeiture of recognisances. For fines and forfeitures imposed at quarter sessions generally, see titles CRIMINAL LAW AND PROCEDURE; MAGISTRATES.

(*b*) *Re Cook* (1845), 7 Q. B. 653.

his jurisdiction and to his special officer commanding them to apprehend and bring such person into court. Such warrant can, however, only be executed within the jurisdiction of the coroner making it(*c*); and if it is desired to compel the attendance of a witness who is outside the jurisdiction, a Crown Office subpœna must be obtained and served personally upon him (*d*).

Committal for contempt.

610. A coroner may, instead of inflicting a fine, commit for contempt of court any person within his jurisdiction who, having been summoned to give evidence, does not appear in court, or, although appearing, refuses without lawful excuse to give evidence (*e*).

Depositions to be reduced to writing and signed.

611. It is the duty of the coroner in a case of murder or manslaughter to put into writing the statement on oath of those who know the facts and circumstances of the case, or so much of such statement as is material, and any such deposition must be signed by the witness and also by the coroner (*f*). And, generally, it is the duty of a coroner, after a witness's evidence has been reduced into writing, to read it over to the witness and obtain his signature thereto (*g*); and it seems that if a witness will not sign the coroner may commit him for contempt (*h*).

Publication of evidence.

612. At common law it was illegal to publish the evidence given before a coroner's jury in cases in which any person might be committed for trial on a charge of murder or manslaughter, and the Court of King's Bench would formerly grant an information against the publisher of a newspaper containing a statement of such evidence, although the statement was correct and the publisher not actuated by malice, on the ground that such evidence was *ex parte* and the publication of it might tend to prejudice the trial of any person committed by the coroner on the charge inquired into at the

(*c*) There is no provision in law for backing a coroner's warrant for the apprehension of a person refusing to attend the court, such as exists in the case of a justice's warrant for the apprehension of a person charged with an indictable offence by the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 11, for which provision see titles CRIMINAL LAW AND PROCEDURE; MAGISTRATES.

(*d*) If not served personally, the person disobeying the subpœna cannot be proceeded against for contempt (*Smalt* v. *Whitmill* (1737), 2 Stra. 1054). For such subpœnas, see title CROWN PRACTICE.

(*e*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 19 (2), (3); Sir J. Jervis on Coroners (1829), pp. 229, 230; Chitty, Criminal Law, Vol. I., p. 164.

(*f*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (2). As it often is doubtful whether the facts to be given in evidence will or will not warrant a verdict of manslaughter, it is the usual and proper practice for the coroner in all cases to take down in writing the depositions of witnesses and have them signed by the witnesses.

(*g*) *R.* v. *Plummer* (1844), 1 Car. & Kir. 600, *per* GURNEY, B., at p. 604. Sir J. Jervis on Coroners (1829), p. 235, says that although it is usual for witnesses to sign their depositions, it is not necessary that they should do so in order to render the depositions evidence.

(*h*) Sir J. Jervis on Coroners (1829), p. 236. As to the admissibility of depositions taken before a coroner on the trial of a person charged with an offence to which such depositions relate, see p. 291, *post*.

SECT. 1. Proceedings at Inquest.

inquest (*i*). The common law in this respect is, however, now tempered by the statutory provision that a fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority is privileged if published contemporaneously with such proceedings, but such privilege does not extend to the publication of blasphemous or indecent matter (*k*). A coroner's court is a court exercising judicial authority (*l*).

SUB-SECT. 6.—*Medical Witnesses and Post-mortem Examinations.*

Power of coroner to summon medical witnesses.

613. If it appears to the coroner that the deceased was attended at his death or during his last illness by any legally qualified medical practitioner, the coroner may summon such practitioner as a witness. If, however, it appears to the coroner that the deceased person was not attended at his death or during his last illness by any legally qualified medical practitioner, the coroner may summon any legally qualified medical practitioner who is at the time in actual practice in or near the place where the death happened. Any medical witness so summoned may be asked to give evidence as to how in his opinion the deceased came to his death (*m*).

Pugilistic encounter.

614. The coroner ought to summon a medical witness to give evidence where the death appears to have resulted in or by reason of a pugilistic encounter (*n*).

Post-mortem examination.

615. The coroner may, either in his summons for the attendance of such medical witness or at any time between the issuing of that summons and the end of the inquest, direct such medical witness to make a post-mortem examination of the body of the deceased, with or without an analysis of the contents of the stomach or intestines. If, however, any person states upon oath before the coroner that in his belief the death of the deceased was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, such medical practitioner or other person may not be allowed to perform or assist at the post-mortem examination of the deceased (*o*).

(*i*) *R.* v. *Fleet* (1818), 1 B. & Ald. 379, *per* BAYLEY, J., at p. 384: "It is highly criminal to publish before such trial an account of what has passed at the inquest before the coroner."

(*k*) Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 3; and see, generally, title LIBEL AND SLANDER. The common law rule did not apparently apply to the publication of evidence given at inquests on persons dying by their own hand; and the statutory ground of privilege will not apply to publication of evidence at inquests from which the coroner in his discretion excludes the public, as to which see p. 258, *ante*. In *Weldon* v. *Moignard* (1889), 87 L. T. Jo. 356, the vacation judge refused to interfere with the publication of the evidence at an inquest with comments, although in his opinion it was most improper.

(*l*) See *Garnett* v. *Ferrand* (1827), 6 B. & C. 611; *Thomas* v. *Churton* (1862), 2 B. & S. 475.

(*m*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 21 (1). As to the fees payable to medical witnesses, see p. 293, *post*.

(*n*) *R.* v. *Quinch* (1831), 4 C. & P. 571.

(*o*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 21 (2).

If a majority of the jury are of opinion that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witnesses brought before them, they may require the coroner in writing to summon as a witness some other legally qualified medical practitioner named by them, and further to direct a post-mortem examination of the deceased, with or without an analysis of the contents of the stomach or intestines, to be made by such last-mentioned practitioner, whether such examination has been previously made or not. The coroner is bound to comply with such requisition, and is guilty of a misdemeanour if he does not (*p*).

A second inquest may be ordered to be held if it appears to the court that a post-mortem examination of the deceased should have been but was not made; but a second inquest will not be ordered if it appear that a post-mortem examination would not further explain the cause of death (*q*).

Penalty on medical practitioner for disobedience to summons.

616. If a medical practitioner fails to obey a summons of a coroner issued as above mentioned, then, unless he shows a good and sufficient cause for not having obeyed the same, he is liable on summary conviction, on the prosecution of the coroner or of any two of the jury, to a fine not exceeding £5 (*r*).

Removal of body for examination.

617. Where a place has been provided by a sanitary or nuisance authority for the reception of dead bodies during the time required to conduct a post-mortem examination (*s*), the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal is deemed to be part of the expenses incurred in and about the holding of an inquest (*t*).

Outside the administrative county of London any local authority may (*u*), and within such county any sanitary authority may, and if required by the London County Council must, provide and maintain a proper building (other than a workhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such building (*w*). In London such building may be provided in connection with the mortuary which every metropolitan sanitary authority is bound to provide and fit up (*a*), but no post-mortem may be held in such mortuary (*b*).

(*p*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 21 (3).

(*q*) *R.* v. *Coulson* (1891), 55 J. P. 262.

(*r*) Coroners Act, 1887 (50 & 51 Vict. c. 73), s. 23. This is apparently an alternative liability to that of being fined or committed for contempt by the coroner to which all witnesses summoned by the coroner are subject; but it is to be noted that under this section a medical practitioner may be fined for not obeying the direction in a summons to make a post-mortem examination, a refusal to make which would not otherwise involve liability.

(*s*) As to this, see titles BURIAL AND CREMATION, Vol. III., p. 566; PUBLIC HEALTH ETC.

(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 24.

(*u*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 143.

(*w*) Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 90 (1).

(*a*) *Ibid.*, s. 88. And see titles BURIAL AND CREMATION, Vol. III., p. 566; PUBLIC HEALTH ETC.

(*b*) *Ibid.*, s. 90 (2).

SECT. 1. Proceedings at Inquest.

SUB-SECT. 7.—*Adjournment.*

Adjournment of inquest.

618. The coroner may in his discretion, if sufficient evidence is not at hand, or if he or the jury suspect undue influence or that the witnesses are secreted and not forthcoming (*c*), or for other good reason, such as perverseness of the jury (*d*), adjourn the inquest to another day, at the same or another place, first taking the jurors' recognisances for their appearance at the adjourned time and place (*c*). Where the jury fail to agree upon a verdict the coroner may also adjourn the inquest to the assizes (*e*). He is not, however, justified in adjourning the jury to places at a great distance by way of punishment; and if the jury agree in returning an insensate verdict, the coroner may adjourn the inquest to the assizes in order that the jury may be further charged upon the matter by the justices (*f*). Except in special circumstances, the coroner ought not to adjourn the inquest for the purpose of drawing up the inquisition; this should be drawn up immediately after the verdict is returned and be forthwith signed by the jurors (*g*).

Any adjournment of an inquest must be made formally by proclamation; it is not sufficient to adjourn it by letter or message. If it be adjourned to a day named and on that day the court be not formally opened, the inquest comes to an end, and everything done thereafter touching the inquest is ineffectual, whatever stage in the proceedings may have been reached (*h*).

SUB-SECT. 8.—*Verdict of Jury.*

Verdict of jury.

619. After viewing the body and hearing the evidence the jury must give their verdict and certify it by an inquisition in writing, setting forth, so far as such particulars have been proved to them, who the deceased was, and how, when, and where the deceased came by his death, and if he came by his death by murder or manslaughter, the persons, if any, whom they find to have been guilty of such murder or manslaughter, or of being accessories before the fact to such murder (*i*). The coroner is bound to accept the verdict of the jury, however insensate, though he may further direct and charge them as to the law and as to the nature of the evidence given by the witnesses, and, if he thinks proper, adjourn

(*c*) Umfreville on the Office and Duty of Coroners (1761), Vol. II., p. 209; *Anon.* (1626), Lat. 166.

(*d*) *R.* v. *Taverner* (1616), 3 Bulst. 171, at p. 173, where, the jury refusing to give a verdict, the coroner adjourned them from time to time and from place to place, and informed the justices of assize of their perversity, whereupon the justices commended the coroner and fined the jury.

(*e*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (5); see p. 271, *post.*

(*f*) *Smith's Case* (1696), Comb. 386.

(*g*) *R.* v. *Mallett and Chilcote* (1846), 1 Cox, C. C. 336.

(*h*) *R.* v. *Payn* (1864), 34 L. J. (Q. B.) 59, where, after verdict, the coroner adjourned the inquest to a day named for the purpose of meanwhile preparing the inquisition for signature by the jurors, but, instead of attending on that day, further adjourned the inquest by notice to a future day, on which day the jurors attended and signed the inquisition, and the court quashed the inquisition for the informality of the adjournment.

(*i*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (3).

the inquest to the assizes (*k*). The verdict of the jury, when found, is formally recorded in the inquisition (*l*).

Failure of jury to agree.

620. If twelve of the jury cannot agree on a verdict, the coroner may order them to be kept without meat, drink, or fire until they return a verdict (*m*). If, however, that process is ineffectual, the coroner may adjourn the inquest to the next sessions of oyer and terminer or gaol delivery held for the county or place in which the inquest is held, and if, after the jury have heard the charge of the judge or commissioner holding such sessions, twelve of them still fail to agree on a verdict, the jury may be discharged by such judge or commissioner without giving a verdict (*n*).

Particulars for registration of death.

621. The jury must also inquire of and find the particulars for the time being required by the Registration Acts (*o*) to be registered concerning the death (*p*). These particulars are (1) the time and place of death; (2) the christian name and surname, sex, and age of the deceased; (3) the rank, profession, or occupation of the deceased at the time of death (*q*); and (4), if the death took place at sea, the nationality and last place of abode of the deceased (*r*).

Prisoner executed.

622. When the inquest is held upon the body of a prisoner who has been executed in pursuance of law, the jury must inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender (*s*).

SUB-SECT. 9.—*Coroner's Certificate and Order for Burial.*

Coroner's certificate to be sent to registrar of deaths.

623. The jury having found their verdict and the particulars required by the Registration Acts to be registered in the case of death (*t*), the coroner, after the termination of an inquest on any death, must send to the registrar of deaths, whose duty it is by law to register the death, such certificate of the finding of the jury and within such time as is required by the Registration Acts (*u*). This

(*k*) *Smith's Case* (1696), Comb. 386.
(*l*) See p. 273, *post*.
(*m*) Sir J. Jervis on Coroners (1829), p. 229. After verdict the court will presume that the inquisition was found by twelve jurymen (*Lambert* v. *Taylor* (1825), 4 B. & C. 138).
(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (5).
(*o*) The expression "Registration Acts" means the Acts for the time being in force relating to the registration of deaths, inclusive of any enactment amending the same (Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 42). As to such Acts, see title REGISTRATION OF BIRTHS AND DEATHS.
(*p*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (4).
(*q*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 47, applying Sched. B of the Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), as amended by the Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22).
(*r*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 37 and Sched. IV.
(*s*) Capital Punishment Amendment Act, 1868 (31 & 32 Vict. c. 24), s. 5.
(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (4); see *supra*.
(*u*) *Ibid.*, s. 18 (3).

SECT. 1. Proceedings at Inquest.

certificate must give information concerning the death and specify the finding of the jury with respect to such particulars and to the cause of death, and also specify the time and place at which the inquest was held. The registrar must then enter in the prescribed form and manner the death and particulars, and if the death has been previously registered the said particulars must be entered in the prescribed manner, without any alteration of the original entry (*a*).

Correction of error.

624. Where an error of fact or substance (other than an error relating to the cause of death) occurs in the information given by a coroner's certificate concerning a dead body upon which he has held an inquest, the coroner, if satisfied by evidence on oath or statutory declaration that such error exists, may certify under his hand to the officer having the custody of the register in which such information is entered the nature of the error and the true facts of the case as ascertained by him on such evidence, and the error may thereupon be corrected by such officer in the register by entering in the margin (without any alteration of the original entry) the facts as so certified by the coroner (*b*).

Burial of body on which inquest held.

625. A coroner, upon holding an inquest upon any body, may, if he thinks fit, after view of the body, by order under his hand authorise the body to be buried before verdict and before registry of the death (*c*), and in such case must deliver the order to the relative of the deceased or other person who causes the body to be buried, or to the undertaker or other person having charge of the funeral (*d*).

Every such order must further be delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order was given by the coroner who fails so to deliver or cause to be delivered the same is liable on summary conviction to a penalty not exceeding 40*s*. (*e*).

If, however, the body of the deceased is buried in consecrated ground without the rites of the Church of England under the Burial Laws Amendment Act, 1880, the order of the coroner is to be delivered to the relative, friend, or legal representative of the deceased having the charge or being responsible for the burial, instead of to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom the order is given by the coroner who fails so to deliver or cause to be delivered the same is liable to a penalty not exceeding 40*s*., and any such relative, friend, or legal representative above mentioned to whom no such order is

(*a*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 16.
(*b*) *Ibid.*, s. 36.
(*c*) On this subject, see more fully title BURIAL AND CREMATION, Vol. III., p. 562.
(*d*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 17, as amended by the Coroners Act, 1887 (50 & 51 Vict. c. 71), ss. 18 (6), 45.
(*e*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), ss. 17, 45.

delivered must within seven days after the burial give notice thereof in writing to the registrar of births, deaths, and marriages, and if he fail to do so is liable to a penalty not exceeding £10 (*f*).

When an inquest has been held on a body the coroner may give a certificate, in statutory form, which will enable the body to be cremated instead of being buried (*g*).

Burial of person dying *felo de se*.

626. It is not lawful (as it formerly was) for a coroner or other officer having authority to hold inquests to issue any warrant or other process directing the interment of the remains of persons against whom a finding of *felo de se* may be had in any public highway or with any stake driven through the body of such person, but such coroner or other officer must give directions for the interment of such person *felo de se* in the churchyard or burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of *felo de se* had not been found against such person (*h*).

SECT. 2.—*The Inquisition.*

SUB-SECT. 1.—*Form and Requisites.*

Requisites of inquisition.

627. The finding of the coroner's jury is recorded in the inquisition, which must be in writing under the hands, and in the case of murder or manslaughter also under the seals, of the jurors who concur in the verdict and of the coroner (*i*). It need not, except in the case of murder or manslaughter, be on parchment, and may be written or printed or partly written and partly printed (*j*); and for these purposes *felo de se* is deemed to be murder (*k*).

It is drawn up by the coroner, and should be drawn up by him immediately after the verdict, and, unless for exceptional reasons, should be signed and, if necessary, sealed forthwith by the jurors without adjournment (*l*). A coroner who in drawing up the inquisition materially alters or adds to the verdict of the jury without the knowledge of the jury may be indicted for forgery (*m*).

Executions.

628. Where an inquest has been held upon the body of an offender upon whom judgment of death has been executed the

(*f*) Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 11, as amended by the Burial and Registration Acts (Doubts Removal) Act, 1881 (44 Vict. c. 2); see title BURIAL AND CREMATION, Vol. III., p. 561.

(*g*) Cremation Regulations, 1903, rr. 6, 8. The statutory form of certificate is as follows:—

"I certify that I held an inquest on the body of , and that the verdict of the jury was as follows: . Medical evidence was given by . I am satisfied from the evidence that the cause of death was , and that no circumstance exists which could render necessary any further examination of the remains or any analysis of any part of the body." It appears from the form of this certificate that a coroner cannot substitute an order to cremate a body for the order for burial which he is entitled to make after view of the body and before verdict.

(*h*) Interments (felo de se) Act, 1882 (45 & 46 Vict. c. 19), s. 2; and see title BURIAL AND CREMATION, Vol. III., p. 421.

(*i*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 18 (1).

(*j*) *Ibid.*, s. 18 (2).

(*k*) *R.* v. *Whalley* (1849), 19 L. J. (Q. B.) 14, where an inquisition of *felo de se* was quashed because it was not written on parchment; see *R.* v. *Beavers* (*temp.* Lord Mansfield, 1756—1788), 1 East, P. C. 383.

(*l*) *R.* v. *Mallet and Chilcote* (1846), 1 Cox, C. C. 336.

(*m*) *R.* v. *Marsh* (*circ.* 1700), 3 Salk. 172.

SECT. 2. The Inquisition.

inquisition must be in duplicate, and one of the originals must be delivered to the sheriff (*n*).

Form of inquisition.

629. The inquisition consists of three parts, the caption, the verdict of the jury, and the attestation; and although, as hereafter appears, a wide power is vested in the court before which the person charged in an inquisition with murder or manslaughter is being tried to amend defects in the inquisition if it finds sufficiently the matters required to be found thereby and sufficiently designates the person and the offence charged (*o*), it is necessary, in order that these conditions may be satisfied, that various matters should be alleged in the inquisition with certain formality.

(1) Caption.

630. The venue must be stated either in the margin or body of the caption, and should be the county or other jurisdiction within which the dead body lies and the inquest is held, although the injury causing death may have occurred within some other jurisdiction (*p*). If the inquest is held by the coroner of a county or borough, the venue must be laid in that county or borough, and if the jurisdiction of the coroner extend only to part of a county or within a particular liberty only, the venue stated must be co-extensive with that jurisdiction and descriptive of that particular part only (*q*).

Venue.

An inquisition will not, however, be deemed insufficient for want of a proper or perfect venue (*r*).

Place.

631. The parish or place in which the inquest is held must appear and show with sufficient certainty that it is within the jurisdiction of the coroner (*s*).

Date.

632. The date upon which the inquest was holden must appear, and if it commenced on one day and was continued by adjournment on subsequent days, the days of adjournment should be stated (*a*). If the date appearing be shown by reference to an almanac to be a Sunday the inquisition will be bad (*b*).

Jurisdiction to be shown.

633. It must appear that the inquisition was taken before a court of competent jurisdiction, and therefore it is not sufficient to

(*n*) Capital Punishment Amendment Act, 1868 (31 & 32 Vict. c. 24), s. 5.

(*o*) See Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 20 (1); and p. 281, *post.*

(*p*) See Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12.

(*q*) Sir J. Jervis on Coroners (1829), p. 247; 2 Hale, P. C. 163, 166; *R.* v. *Pomfret Liberty Coroner* (1844), 8 Jur. 910.

(*r*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 24, 30. The repealed Coroners Act, 1843 (6 & 7 Vict. c. 83), s. 2, contained a provision to a similar effect.

(*s*) *Thorney's Case* (1611), Cro. Jac. 276; *Anon.* (1552), 1 Dyer, 69 a; *Long's Case* (1604), 5 Co. Rep. 120, where the caption of an inquisition stating the inquest to have been held at Cossam before the coroner for the liberty of Cossam was held to be sufficient without alleging that Cossam was within the liberty of Cossam. For the local jurisdiction of the coroner, see Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7; and p. 219, *ante.*

(*a*) See *R.* v. *Fearnley* (1786), 1 Term Rep. 316; *Dakin's Case* (1672), 2 Saund. 291; *R.* v. *Skeats and Biles* (1846), 7 L. T. (o. s.) 433, where an inquisition, stated in the caption to have been held on the 15th June and by adjournment on several successive days purported to have been signed and sealed "on the day first aforesaid," was held sufficient.

(*b*) *Mackalley's Case* (1611), 9 Co. Rep. 65 b, 66 b; *Hoyle* v. *Cornwallis* (*Lord*) (1719), 1 Stra. 387.

describe the coroner by name only; he must be designated by the style of his office, not only as coroner (*c*), but also as coroner for the jurisdiction within which the inquest was held (*d*). If a county coroner assigned to a district of the county holds an inquest in another district of the county during the illness, incapacity, or unavoidable absence of the coroner for such other district, or during a vacancy in the office of coroner for that district, he must in the inquisition certify the cause of his attendance and holding the inquest (*e*). When an inquest is held before a deputy coroner the inquisition should be alleged in the caption to be taken before the coroner (*f*).

View of body

634. As the viewing of the body by the jury is essential to give the coroner jurisdiction, it must be expressly stated that the inquisition was taken "on view of the body" (*g*).

Name of deceased.

The full name of the deceased, being either his real name or that by which he was usually known, must be stated if the same is known. If it is not known he should be described as a person to the jurors unknown (*h*). An inquisition is not, however, to be held insufficient because any person or persons mentioned therein is or are designated by a name of office or other descriptive appellation instead of his, her, or their proper names (*i*).

Jurors.

635. It must expressly appear that the jurors are from the county or jurisdiction within which the inquest is holden (*k*), but it is not necessary that they should be stated to be of the adjacent townships (*l*). In cases of murder, manslaughter, and *felo de se* the names of the jurors should be set out in the caption (*m*). It must also in all cases appear that the jurors present the inquisition upon oath (*n*).

(*c*) Staundford, Pleas of the Crown, 96, where an inquisition stated in the caption to have been held *super visum corporis* before the Mayor of London without describing him as coroner for the City of London was held insufficient.

(*d*) *Dearing's Case* (1590), Cro. Eliz. 193, where the inquisition, which was stated to have been taken before T. G., "coroner of the Lord Barkley," was held insufficient.

(*e*) Coroners Act, 1844 (7 & 8 Vict. c. 92), s. 20; and see p. 237, *ante*. When this happens the inquisition should be stated in the caption to be taken "before A. B., one of the coroners of our Lord the King for the county of X., assigned to the district of Y., and, by reason of the unavoidable absence [*or as the case may be*] of C. D., the coroner of our Lord the King for the said county assigned to the district of Z., now acting in and for the said district of Z."

(*f*) See *R.* v. *Perkin* (1845), 7 Q. B. 165.

(*g*) Sir J. Jervis on Coroners (1829), p. 252; see the statutory form, p. 278, *post*.

(*h*) 2 Hawk. P. C., c. 25, ss. 71, 72.

(*i*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 24, 30.

(*k*) Sir J. Jervis on Coroners (1829), p. 252; and see the statutory form, p. 278, *post*.

(*l*) *R.* v. *Cross* (1664), 1 Sid. 204.

(*m*) *Pinner's Case* (1583), Cro. Eliz. 31; *R.* v. *Evett* (1827), 6 B. & C. 247; and see the statutory form of inquisition, p. 278, *post*. If, however, the names of the jurors appear as signatories of the inquisition, it seems that the inquisition could be amended by inserting their names in the caption under s. 20 (1) of the Coroners Act, 1887 (50 & 51 Vict. c. 71) (see p. 281, *post*), seeing that the Coroners Act, 1843 (6 & 7 Vict. c. 83), s. 2, which that section now replaces, contained an express provision that an inquisition might be amended in that respect.

(*n*) *Pinner's Case, supra*; 2 Hawk. P. C., c. 25, s. 126.

SECT. 2. The Inquisition. (2) Verdict.

636. The verdict must set forth, so far as such particulars have been proved to the jury, who the deceased was, and how, when, and where the deceased came by his death, and, if he came by his death by murder or manslaughter, the persons, if any, whom the jury find to have been guilty of such murder or manslaughter, or of being accessories before the fact to such murder (*o*).

In describing who the deceased was the verdict should set out the particulars required by the Registration Acts (*p*).

In addition to the particulars of when and where the deceased came by his death the verdict should set out where the dead body was found, and it has been said that this is essential in order to originate the jurisdiction of the coroner (*q*). It is also usual and proper to allege the date of the finding (*r*).

Separate finding as to cause and circumstances of death.

637. The part of the verdict dealing with how the deceased came by his death is usually expressed in two separate findings, the first setting out the physical cause of death and the circumstances in which the death occurred, and the second stating the conclusion drawn by the jury from these facts as to whether the death was due to murder, accident, natural causes etc., as the case may be.

If the jury conclude that the death of the deceased was due to murder or manslaughter it is not necessary to set forth in the inquisition the manner in which or the means by which the death of the deceased was caused, but it is sufficient in a case of murder to allege that the person charged did feloniously, wilfully, and of malice aforethought kill and murder the deceased, and, in a case of manslaughter, that the person charged did feloniously kill and slay the deceased; and where the jury desire to find that any person is an accessory to any murder or manslaughter it is sufficient to charge the principal with the murder or manslaughter (as the case may be) in the manner above specified, and then to charge the other person as an accessory in the manner usual in indictments (*s*).

If, however, the inquisition condescends to particulars and sets out the finding of the jury as to the manner and means of the death, and then charges murder or manslaughter against any person, the finding as to the manner and means of the death must contain an allegation of material facts sufficient to support a conviction upon the charge, otherwise the inquisition may be quashed (*t*).

(*o*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (3).

(*p*) *Ibid.*, s. 4 (4). For these particulars, see p. 271, *ante*.

(*q*) *R.* v. *Evett* (1827), 6 B. & C. 247.

(*r*) See the statutory form, p. 278, *post*.

(*s*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 6, held to apply to a coroner's inquisition in *R.* v. *Ingham* (1864), 5 B. & S. 257.

(*t*) *R.* v. *Oxford Circuit* (*Clerk of Assize*), [1897] 1 Q. B. 370, where it was alleged in the inquisition that the deceased's death was due to injuries to his head and back caused by a fall into a quarry, and that by the neglect of A. B. and C. D. to fence or cause to be fenced the said quarry the deceased fell therein, and that therefore the said A. B. and C. D. did feloniously kill the deceased, and the inquisition was quashed on the ground that there was no allegation therein that A. B. or C. D. had any relation to the quarry which imposed upon them a personal liability to fence. The attention of the court does not, however, appear to have been called to the example given in the statutory form of inquisition, (see p. 278, *post*), which was the model on which the inquisition in question was

The names of the persons (if any) whom the jury find to have been guilty of the murder or manslaughter of the deceased, or accessories thereto, must, if known, be stated with the same precision as would be necessary in an indictment (*a*), and if the name of such person is not known, such person should be described as "a person to the jurors unknown" (*b*).

(3) Attestation.

638. It is usual and proper for the inquisition to end with the clause "In witness whereof, as well the said coroner as the jurors aforesaid have hereunto set and subscribed their hands [and seals] the day and year first above written" (*c*). It must in all cases be signed by the coroner and the jurors who concur in the verdict, and in the case of murder or manslaughter or *felo de se* (*d*) it must also be under their seals (*e*). Such seals, however, are sufficiently represented by printed stamps against the respective names where there is the usual averment that the inquisition is under their hands and seals (*f*). It is no objection to the inquisition that any juror sets his mark thereto instead of subscribing his name, nor that such mark is unattested, provided the name of the juror be set forth, nor because any juror signs his Christian name or names by means of an initial or partial signature only and not at full length (*g*).

Deputy coroner.

639. If the inquest is held before a deputy coroner, the deputy should sign in the name of the coroner and not in his own name. It is mere surplusage to add after the coroner's name the words "by C. D. his deputy" or to that effect (*h*).

(4) Statutory form.

640. It is provided by statute that an inquisition may be in the form following, or to the like effect, or in such other form as the Lord

framed, and contains no such allegation as that said to be necessary in such a case.

(*a*) *R.* v. *Great Western Rail. Co.* (*Directors*) (1888), 20 Q. B. D. 410, where an inquisition alleging that "the directors of the Great Western Railway Company" did feloniously slay and kill the deceased was quashed by a divisional court on the ground that the names of the persons charged were not set out therein.

(*b*) *R.* v. —— (1822), Russ. & Ry. 489.

(*c*) Sir J. Jervis on Coroners (1827), p. 270; see the statutory form, p. 278, *post*.

(*d*) *R.* v. *Whalley* (1849), 19 L. J. (Q. B.) 14, where it was held that for the formal purposes of an inquisition *felo de se* is equivalent to murder.

(*e*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 18 (1). An inquisition which is not signed by all the jurors concurring in the verdict (or at all events by twelve of them) is wholly void and not an inquisition at all (*R.* v. *Norfolk Justices* (1792), Nolan, 141).

(*f*) *R.* v. *Skeats and Biles* (1846), 7 L. T. (o. s.) 433.

(*g*) This was a provision in the Coroners Act, 1843 (6 & 7 Vict. c. 83), s. 2, and although that Act is now repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 45, yet, as it is provided by s. 20 (1) of the later Act (see p. 281, *post*) that the inquisition shall not be quashed for any defects, it must be assumed that such irregularities as were at the passing of the Act in 1887 cured by the statute then in force are now not matters of objection. Before the Coroners Act, 1843 (6 & 7 Vict. c. 83) subscription by the jurors with the initials only of their Christian names rendered the inquisition liable to be quashed (*R.* v. *Evett* (1827), 6 B. & C. 247; but see *R.* v. *Bennett* (1833), 6 C. & P. 179).

(*h*) *R.* v. *Perkin* (1845), 7 Q. B. 165.

SECT. 2. The Inquisition.

Chancellor from time to time prescribes, or to the like effect, and the statement therein may be made in concise and ordinary language (*i*):—

Middlesex to wit. An inquisition taken for our Sovereign Lord the King at , in the parish of , in the county [*or as the case may be*] of , on the day of , 19 [and by adjournment on the day of , *or as the case may require*] before A. B., one of the coroners of our Lord the King for the said [county, *or, as the case may be*] upon the oath [*or* and affirmation] of [*in the case of murder or manslaughter here insert the names of the jurors*, L. M., N. O., etc. *being*] good and lawful men of the said [county *or, as the case may be*] duly sworn to inquire for our Lord the King, on view of the body of C. D. [*or* of a person to the jurors unknown] as to his death; and those of the said jurors whose names are hereunto subscribed upon their oaths do say:—

Circumstances of death.

Here set out the circumstances of the death, as, for example:

(1) That the said C. D. was found dead on the day of in the year aforesaid at in the county of [*or set out other place of death*], and

(2) That the cause of his death was that he was thrown by E. F. against the ground, whereby the said C. D. had a violent concussion of the brain and instantly died [*or set out other cause of death*].

Conclusion

Here set out the conclusion of the jury as to death, as, for example:

(3) and so do further say, that the said E. F. did feloniously kill [*or* feloniously, wilfully, and of malice aforethought murder] the said C. D.

Or do further say that the said E. F. by misfortune and against his will did kill the said C. D.

Or do further say that E. F. in the defence of himself [and property] did kill the said C. D.

In case of there being an accessory before the fact add:

And do further say that K. L., before the said murder was committed, did feloniously incite [*or* procure, aid, counsel, and command, *or as the case may be*] the said E. F. to commit the said murder.

At end add:

In witness whereof as well the said coroner as the jurors have hereunto subscribed their hands and seals the day and year first above written.

Another example is:

That the said C. D. did on the day of fall into a pond of water situate at , by means whereof he died.

Here set out the conclusion of the jury as to the death, as, for example:

And so do further say that the said C. D., not being of sound mind, did kill himself.

Or do further say that the said C. D. did feloniously kill himself.

Or do further say that by the neglect of E. F. to fence the said

(*i*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 18 (2).

pond C. D. fell therein, and that therefore E. F. did feloniously kill the said C. D. (*k*).

Or do further say that the said C. D. by misadventure fell into the said pond and was killed.

SUB-SECT. 2.—*Custody and Filing.*

Custody and filing of inquisitions.

641. It was formerly the practice for the coroner to return all inquisitions of *felo de se* and those finding a deodand into the Crown Office, where they were filed (*l*), and any person aggrieved by any such inquisition could apply to the King's Bench to refuse to allow it to be filed (*m*). This practice has, however, been discontinued. Inquisitions do not now find deodands, and coroners keep in their own custody all inquisitions, except such as charge murder or manslaughter, which must be delivered to the proper officer of the court in which the trial of the party charged is to be tried (*n*), or to the Director of Public Prosecutions when the prosecution of the party charged is undertaken by that official (*o*). In the case of persons executed in prison the coroner is required to deliver a duplicate of the inquisition to the sheriff (*p*).

Recourse can, therefore, no longer be had to the remedy of applying to the court to disallow or stay the filing of an inquisition of *felo de se* to which objection is taken by representatives of the deceased, but in such case the alternative remedy of applying to quash the inquisition may be pursued (*q*).

SUB-SECT. 3.—*Traverse of Inquisition.*

Traverse of inquisition.

642. A coroner's inquest being but a preliminary inquiry which may or may not end in a criminal charge against a particular

(*k*) See, however, *R.* v. *Oxford Circuit* (*Clerk of Assize*), [1897] 1 Q. B. 370; and note (*t*), p. 276, *ante*.

(*l*) In *R.* v. *Stanlake* (1672), 1 Mod. Rep. 82, it was laid down that the coroner should return his examination with the inquisition.

(*m*) See *R.* v. *Bond* (1716), 1 Stra. 22, where it appeared that deceased died five years before, and the coroner dug up and held an inquest upon a skull which he said he recognised by a particular mark, and filing was refused; *Barclee's Case* (1658), 2 Sid. 90, 101, where the coroner refused to allow counsel for the administrator of deceased, who was found *felo de se*, to examine or cross-examine witnesses on behalf of the deceased, and filing was refused; *R.* v. *Atkinson* (1701), 12 Mod. Rep. 496, where, an indictment having been laid against the coroner for malpractice to find one *felo de se non compos mentis*, the filing of the inquisition was stayed until the indictment should be tried.

(*n*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 5 (3). Formerly the goods of one found by inquisition *felo de se* were forfeited to the Crown; and if by any inquisition death were found to be attributable to any instrument inanimate or beast animate, that instrument or animal might have been forfeited as a deodand. Filing the inquisition in the Crown Office was a preliminary to enforcing these forfeitures. The abolition of forfeitures for *felo de se* by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), and of deodands by 9 & 10 Vict. c. 62 (repealed by Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66)), rendered such filing superfluous.

(*o*) Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 5; see p. 290, *post*.

(*p*) Capital Punishment Amendment Act, 1868 (31 & 32 Vict. c. 24), s. 5; see p. 241, *ante*.

(*q*) See p. 283, *post*.

SECT. 2. The Inquisition.

individual, the inquisition is in no case conclusive, and anyone affected by it may deny its authority and traverse the finding of the jury (*r*). Where the inquisition charges any party with murder or manslaughter or with being an accessory thereto, the traverse is made by plea before the court into which the inquisition is returned. In other cases the inquisition must be removed by *certiorari* into the King's Bench Division of the High Court (*s*), and, if not quashed for any of the reasons for which an inquisition may be quashed (*t*), it may by leave of the court be traversed and the issue submitted to a jury at the assizes or elsewhere (*a*). Even if the inquisition has been quashed for informality, it may be ordered that the death shall be presented at the assizes and the inquisition there traversed and tried (*b*).

Exception.

643. There is one exception, however, to the general rule that all inquisitions may be traversed, in that an inquisition cannot be traversed so as to make one *felo de se* who is not found to be so (*c*).

SUB-SECT. 4.—*Amendment.*

Amendment of inquisition.

644. The Court of King's Bench always had under its common law jurisdiction the power of allowing or ordering amendments to inquisitions which, though good in substance, were defective in form (*d*). In the discretion of the court, however, the exercise of this power was strictly confined to defects of form, and only such amendments were allowed as were in the furtherance of justice and as would be allowed by a court of assize in an indictment presented by a grand jury (*e*). The power of the King's Bench Division of

(*r*) *Garnett* v. *Ferrand* (1827), 6 B. & C. 611, 626, 627. Lord COKE was of opinion that an inquisition of *felo de se* was not traversable (3 Co. Inst. 55), but Lord HALE was of the contrary opinion (1 Hale, P. C. 416, 417). In *Barclee's Case* (1658), 2 Sid. 90, the court refused to allow an inquisition of *felo de se* to be filed on account of irregularity at the inquest on the ground that such an inquisition was not traversable, and some remedy was required. But that statement is no longer in accordance with the settled law on the subject. On many occasions the right of the executors or administrators of the deceased to traverse such an inquisition has been upheld by the courts; and see *R.* v. *Parker* (1675), 2 Lev. 140; *R.* v. *Clerk* (1702), 1 Salk. 377; *R.* v. *Aldenham* (1675), 2 Lev. 152, also reported *sub nom. R.* v. *Alderman*, 3 Keb. 564. The opinion of Lord HALE that a presentment of a *fugam fecit* was not traversable (1 Hale, P. C. 417) need not be discussed, as such presentments are no longer made.

(*s*) See Crown Office Rules, 1906, rr. 20—24, 27, 30.

(*t*) See pp. 283 *et seq.*, *post.*

(*a*) See *R.* v. *Aldenham*, *supra*; *R.* v. *Parker*, as reported (1675), 3 Keb. 489; *Ripley's Case* (1682), T. Jo. 198; *R.* v. *Clerk*, *supra.*

(*b*) *R.* v. *Parker*, as reported, 2 Lev. 140. In the report of this case in 3 Keb. 489, Lord HALE is stated to have remarked that "although no evidence but for the King can be given to the coroner or justices, yet after the traverse it may."

(*c*) *Anon.* (1673), 1 Vent. 239, *per* HALE, C.J.; 1 East, P. C. 389.

(*d*) *R.* v. *Harrison* (1664), 1 Sid. 225; *R.* v. *Saloway* (1686), 3 Mod. Rep. 100; *R.* v. *Glover* (1665), 1 Keb. 907; 1 Hawk. P. C., c. 27, s. 15; Com. Dig. tit. Officer, G, 12: "If an inquisition finds the substance, though defective in form, it may be amended."

(*e*) *R.* v. *Evett* (1827), 6 B. & C. 247, where the inquisition did not state the place where the death happened or where the body was found; the names of the jurors were not inserted in the body of the inquisition, and it was subscribed by them with the initials only of their Christian names, and it was held that

the High Court to allow amendments to inquisitions is not affected by the statutory power of amendment (*f*) given to courts before whom persons criminally charged by inquisitions are to be tried (*g*).

Removal into King's Bench Division.

645. The abolition of deodands and of forfeiture of chattels upon inquisitions of *felo de se* (*h*) has practically removed all incentive for applying to the King's Bench Division to amend inquisitions under its common law jurisdiction, but if for any reason it should be desired to make such application, the inquisition must in strictness be removed into the King's Bench Division by *certiorari* (*i*), and then a motion made for the issue of a *venire facias* to bring the coroner into court to make the amendment ordered (*k*).

Statutory power to amend at trial.

646. In addition to the common law powers of amendment vested in the King's Bench Division of the High Court, statutory powers of amending inquisitions are conferred upon every court before which any person criminally charged by a coroner's inquisition is to be tried. The provisions of the statute (*l*) are as follows:—

If in the opinion of the court having cognisance of the case an inquisition finds sufficiently the matters required to be found thereby, and where it charges a person with murder or manslaughter sufficiently designates that person and the offence charged, the inquisition is not to be quashed for any defects, and the court may order the proper officer of the court to amend any defect in the inquisition, and any variance occurring between the inquisition and the evidence offered in proof thereof, if the court is of opinion that such defect or variance is not material to the merits of the case, and that the defendant or person traversing the inquisition cannot be prejudiced by the amendment in his defence or traverse on the merits, and the court may order the amendment on such terms as to postponing the trial to be had before the same or another jury as to the court may seem reasonable, and after the amendment the trial is to proceed in like manner, and the inquisition, verdict, and judgment, are to be of the same effect, and the record is to be drawn up in the same form, in all respects as if the inquisition had originally been in the form in which it stands when so amended (*m*).

these were defects in substance and could not be amended. The inquisition found that the death was occasioned by a coach and horses, the property of A. and B. & Co., and it was held that this finding could not be amended upon affidavits that the property was in A. and B. alone.

(*f*) Namely, that given by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 20.

(*g*) *Ibid.*, s. 35.

(*h*) See note (*n*), p. 279, *ante*.

(*i*) For the removal by *certiorari*, see Crown Office Rules, 1906, rr. 20—24, 27, which by r. 30 are applied to the removal of inquisitions; and title CROWN PRACTICE.

(*k*) *R.* v. *Glover* (1665), 1 Sid. 259; *R.* v. *Evett* (1827), 6 B. & C. 247. In *R.* v. *Williams* (1775), 6 B. & C. 250, n., it is, however, stated that, the record of an inquisition being produced by the officer of the Crown Office, it was amended by an order of YATES, J., on hearing the clerks in court on both sides.

(*l*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 20.

(*m*) It may be useful to set out the particular matters which before the

SECT. 2. The Inquisition.

Respiting recognisances.

For the purpose of any such amendment, the court may respite any of the recognisances taken before the coroner, and the persons bound by such recognisances are bound without entering into any fresh recognisances to appear and prosecute, give evidence, or be tried at the time and place to which the trial is postponed, as if they were orginally bound by their recognisances to appear and prosecute, give evidence, or be tried at that time and place.

Coroners Act, 1887 (50 & 51 Vict. c. 71), were by statute declared not to invalidate an inquisition. By the Coroners Act, 1843 (6 & 7 Vict. c. 83), s. 2 (now repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71)), it was enacted that no inquisition found upon or by any coroner's inquest, nor any judgment recorded upon or by virtue of any such inquisition, should be quashed, stayed or reversed [for want of the averment of any matter unnecessary to be proved, nor for the omission of the words 'with force and arms,' or of the words 'against the peace'], or of the words 'against the form of the statute,' nor for the omission or insertion of any other words or expressions of mere form or surplusage, nor for the insertion of the words 'upon their oath,' instead of 'upon their oaths' [nor for omitting to state the time at which the offence was committed, where time is not of the essence of the offence, nor for stating the time imperfectly, nor because any person or persons mentioned in any such inquisition is or are designated by a name of office, or other descriptive appellation, instead of his, her, or their proper name or names], nor by reason of the non-insertion of the names of the jurors in the body of any such inquisition, or of any difference in the spelling of the names of any of the jurors in the body of any such inquisition and the names subscribed thereto, nor because any juror or jurors shall have set in his or their mark or marks to any such inquisition, instead of subscribing his or their name or names thereto, nor because any such mark or marks is or are unattested, provided the name or names of such juror or jurors is or are set forth, nor because any juror or jurors has or have signed his or their Christian name or names by means of an initial or partial signature only, and not at full length, nor because of any erasures or interlineations appearing in any such inquisition, unless the same shall be proved to have been made therein after the same was signed, nor for want of a proper venue, where the inquest shall appear or purport to have been taken by a coroner of or for the county, riding, city, borough, liberty, division, or place in which it shall appear or purport to have been taken": . . . "and in all or any of such cases of technical defect as are hereinbefore mentioned, it shall be lawful for any judge of either of Her Majesty's courts at Westminster, or any judge of assize or gaol delivery, if he shall so think fit, upon the occasion of any such inquisition being called in question before him, to order the same to be amended in any of the respects aforesaid, and the same shall forthwith be amended accordingly." And by the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24, which is still in force, it is also enacted that "no indictment for any offence" (which includes a coroner's inquisition (*ibid.*, s. 30); and see *R.* v. *Ingham* (1864), 5 B. & S. 257) "shall be held insufficient" by reason of any of the technical defects above mentioned which are included within the brackets [], "nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment" ["taking of the inquisition," Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 30], "or on an impossible day, or on a day that never happened, nor for want of a proper or formal conclusion, nor for want of, or imperfection in, the addition of a defendant, nor for want of the statement of the value or price of any matter or thing" . . . "in any case where the value or price is not of the essence of the offence." And by *ibid.*, s. 25 it is enacted "that every objection to any indictment [inquisition, (*ibid.*, s. 30)] for any formal defect upon the face thereof shall be taken by demurrer or motion to quash such indictment [inquisition] before the jury shall be sworn and not afterwards, and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment [inquisition] to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared."

Effect of statutory powers.

647. These provisions do not affect the common law jurisdiction of the King's Bench Division to quash an inquisition on any ground upon which inquisitions may be quashed (*n*) or to order an amendment of a formal character (*o*), although if the inquisition contains a charge of murder or manslaughter that court will, as a rule, exercise its discretion by leaving the inquisition to be amended by the court before which the trial of the offence charged will take place (*p*).

The description of persons charged with manslaughter by an inquisition as "the directors of the Great Western Railway Company" without giving either their christian names or surnames does not, it seems, "sufficiently designate" the persons charged to admit of such inquisition being amended by any court by the insertion of such christian names and surnames (*q*).

SUB-SECT. 5.—*Quashing Inquisition and New Inquest.*

Quashing inquisition.

648. A coroner's inquisition may be quashed upon the application of any person aggrieved thereby. This may be done (1) by the High Court of Justice under its common law jurisdiction, whether the inquisition contains a criminal charge or not (*r*); (2) by the High Court, under statutory powers, upon application made by or under the authority of the Attorney-General (*s*); and (3) by the court before whom any person criminally charged by the inquisition is arraigned.

Common law jurisdiction of King's Bench Division.

649. The common law jurisdiction of the King's Bench Division of the High Court to quash an inquisition is untouched by the statutory powers conferred upon the High Court by the Coroners Act, 1887 (*t*), although if the defect be merely formal the court will not, as a rule, exercise its jurisdiction, at all events where the inquisition contains a criminal charge, but will leave the matter to be dealt with by the court before whom the charge is to be tried (*a*).

(*n*) *R.* v. *Great Western Rail. Co.* (*Directors*) (1888), 20 Q. B. D. 410.
(*o*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 35.
(*p*) *R.* v. *Oxford Circuit* (*Clerk of Assize*), [1897] 1 Q. B. 370, 373.
(*q*) *R.* v. *Great Western Rail. Co.* (*Directors*), *supra.*
(*r*) For instances of the various classes of cases in which application has been made to the Court of King's Bench or to the King's Bench Division of the High Court to quash an inquisition, see *R.* v. *Great Western Rail. Co.* (*Directors*), *supra*, where the inquisition charged manslaughter; *R.* v. *Parker* (1675), 2 Lev. 140, where the inquisition found *felo de se*; *R.* v. *Robinson* (1887), 19 Q. B. D. 322, where the finding was death from natural causes; *Re Culley* (1833), 5 B. & Ad. 230, where the finding was justifiable homicide; and *R.* v. *Evett* (1827), 6 B. & C. 247, where the finding was death by misfortune. The usual reason for applying to quash an inquisition finding death by misfortune was that formerly the animal or chattel (if any) which the inquisition found to have been the immediate cause of death was forfeited as a deodand. Since the abolition of deodands in 1846 by stat. 9 & 10 Vict. c. 62, repealed by Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), applications to quash such inquisitions have not been made.
(*s*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6.
(*t*) 50 & 51 Vict. c. 71, ss. 6, 20, 35.
(*a*) *R.* v. *Oxford Circuit* (*Clerk of Assize*), *supra.*

SECT. 2. The Inquisition.

Examples.

Coroners' inquisitions have been quashed by the Court of King's Bench and the King's Bench Division of the High Court in the exercise of their common law jurisdiction upon the following grounds:—that the facts being set forth in the inquisition did not warrant the finding of the jury (*b*); that the inquisition did not sufficiently designate the persons charged with manslaughter (*c*); that the inquisition was taken before a coroner not having jurisdiction (*d*), or not appearing in the caption of the inquisition to have jurisdiction (*e*); that the inquest was not held on the day to which it had been adjourned (*f*); that an inquisition charging murder, manslaughter, or *felo de se* is written on paper instead of parchment (*g*); that the word "feloniously" was omitted from a verdict of manslaughter (*h*); that the finding of the jury was uncertain (*i*); that the inquisition was not signed by all the jurors concurring in the verdict, but by the foreman only (*j*); that it did not adequately describe the manner of death (*k*), or set forth the wound and that it was mortal (*l*); that it was wholly irregular in not stating where the death happened or where the body was found (*m*); that there was misconduct or irregularity on the part

(*b*) *R.* v. *Oxford Circuit* (*Clerk of Assize*), [1897] 1 Q. B. 370; *Re Culley* (1833), 5 B. & Ad. 230; *R.* v. *Pocock* (1851), 17 Q. B. 34.

(*c*) *R.* v. *Great Western Rail. Co.* (*Directors*) (1888), 20 Q. B. D. 410.

(*d*) *Foxhall* v. *Barnett* (1853), 2 E. & B. 928.

(*e*) *Dearing's Case* (1590), Cro. Eliz. 193; *Anon.* (1552), 1 Dyer, 69; Staundford, Pleas of the Crown, 96, where the caption stated that the inquisition was taken before the Lord Mayor without alleging that he was also coroner for the City. In *Long's Case* (1604), 5 Co. Rep. 120, an allegation in the caption that the inquest was held at Cossam before the coroner for the liberty of Cossam was held to be sufficient without alleging that Cossam was within the liberty.

(*f*) *R.* v. *Payn* (1864), 34 L. J. (Q. B.) 59.

(*g*) *R.* v. *Whalley* (1849), 19 L. J. (Q. B.) 14; *R.* v. *Beavers* (*temp.* Lord MANSFIELD, 1756—1783), 1 East, P. C. 383; and see Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 18 (2).

(*h*) *R.* v. *Dalzell* (1888), 4 T. L. R. 725.

(*i*) *Anon.* (1696), 12 Mod. Rep. 112, where the jury found that they believed the death to have been caused by a post.

(*j*) *R.* v. *Norfolk Justices* (1792), Nolan, 141, where the court held that the document was a nullity and not an inquisition at all, but the report does not state whether it quashed it.

(*k*) *R.* v. *Parker* (1675), 2 Lev. 140, where the inquisition found that the deceased *felonice* threw himself into the river, *et in rivo præd. seipsum emergit, et sic seipsum occidit et murdravit*, the word *emergit* not connoting drowning; but in *R.* v. *Saloway* (1686), 3 Mod. Rep. 100, a finding that deceased threw himself into the water *et suffocat et emergit erat* was held sufficient, as *suffocat* alone would have been enough.

(*l*) *R.* v. *Clerk* (1702), 1 Salk. 377. It is, however, unnecessary now to set forth at length the nature of the wounds, inasmuch as the provisions of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 6 (see p. 276, *ante*), have been held to apply to coroners' inquisitions (*R.* v. *Ingham* (1864), 5 B. & S. 257). For an example of what was a sufficient description of the wound before that statute, see *R.* v. *Huggins* (1828), 3 C. & P. 414.

(*m*) *R.* v. *Evett* (1827), 6 B. & C. 247, where the inquisition was also held irregular in not containing in the body of the document the names of the jurors, and in being subscribed by the jurors with the initials only of their Christian names. These latter objections would not now be a good ground for quashing an inquisition (see note (*m*), p. 281, *ante*). So the objection in *R.* v. *Hethersal* (1685), 3 Mod. Rep. 80, that the inquisition omitted the year of the King would not now be a good ground for quashing an inquisition (see note (*m*), p. 281, *ante*).

of the coroner or jury (*n*). An inquisition will also be quashed if the inquest be not held *super visum corporis*, and may be quashed if the body upon which the inquest is held is in such a state of decomposition that it is impossible either to identify it or to discover any wound by which death may have been caused (*o*).

An inquisition may be quashed upon the application of the police authorities made with the acquiescence of the coroner, on the suggestion of the coroner's jury that they are dissatisfied with the verdict returned by them (*p*).

Misreception of evidence.

650. With regard to the sufficiency or misreception or non-reception of evidence or misdirection of the coroner, the court will not quash an inquisition on the ground that the evidence is insufficient to justify the findings of the jury (*q*), nor on account of any alleged misdirection of the coroner which does not appear on the record (*r*), unless indeed such misdirection is made with a fraudulent intent (*s*). Evidence not upon oath should not be received by the coroner (*t*), but the court in its discretion will not quash an inquisition because evidence not on oath has been admitted if no mischief appear to have been caused thereby, though it will interfere if it seems that actual mischief has occurred from its

(*n*) *R.* v. *Stukeley* (1701), 12 Mod. Rep. 493, where the coroner took some of the jurymen off the inquest after they had been sworn in order to influence the verdict; *R.* v. *Anderson* (1701), 12 Mod. Rep. 496, where the coroner was guilty of "practice" to make the jury find a *felo de se* a lunatic; *R.* v. *Wakefield* (1718), 1 Stra. 69, where the coroner fraudulently directed the jury to find deceased *felo de se*, telling them that it was the same thing as finding that deceased was a lunatic, and afterwards returned the wrong inquisition into court; *Anon.* (1680), 1 Vent. 352, where an inquisition of *felo de se* was quashed on proof that the deceased was *non compos mentis* and that there had been undue practice by the coroner; *Re Mitchelstown Inquisition* (1888), 22 L. R. Ir. 279, where the coroner was guilty of irregularity in summoning the jury, and also, after the jury had retired, spent an hour with them in the room where they were in consultation, and there took their verdict and drew up the inquisition before returning into court; *Re Ballyragget* (1883), 17 I. L. T. 34, where some of the jurors during the inquest unnecessarily absented themselves, going out into the public streets, and the coroner spent some time with the jury in private before they delivered their verdict.

(*o*) *R.* v. *Bond* (1716), 1 Stra. 22, where the corpse had been buried five years before, and the court refused to allow the inquisition to be filed; *R.* v. *Clerk* (1702), 1 Salk. 377, where, after a first inquisition had been quashed for informality, the coroner having dug up the body and held a fresh inquest, the jury found a verdict of *felo de se*, and on motion to quash the inquisition it was agreed with leave of the court to traverse it and try it at the assizes.

(*p*) *R.* v. *Wood* (1908), 73 J. P. 40.

(*q*) *R.* v. *Ingham* (1864), 5 B. & S. 257; *Re Casey* (1852), 3 I. C. L. R. 22; *Re Mitchelstown Inquisition*, *supra*; though in *R.* v. *Hethersal* (1685), 3 Mod. Rep. 80, where a motion for a *melius inquirendum* was refused because there was no defect in the inquisition, the court is reported to have said: "But if he could produce an affidavit that the jury did not go according to the evidence or of any indirect proceedings of the coroner, then they would grant it."

(*r*) *R.* v. *McIntosh* (1858), 7 W. R. 52; *R.* v. *Ingham*, *supra*.

(*s*) *R.* v. *Wakefield*, *supra*.

(*t*) *R.* v. *Ingham*, *supra*; Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (1); see p. 264, *ante*.

SECT. 2. The Inquisition.

reception (*u*). But if material evidence is excluded by the coroner and the court is of opinion that a miscarriage of justice has occurred by reason of such exclusion, the inquisition will be quashed (*a*).

Swearing of juror after evidence given.

651. An inquisition may be quashed if a juror is sworn after evidence has been given which he has not heard (*b*).

Void inquisition.

652. The court will not quash an inquisition which has been taken by a wholly unauthorised person and is therefore absolutely void (*c*).

Where two persons charged.

653. An inquisition charging two persons with having caused the death may, for misconduct in the coroner with reference to one only, be quashed as to that one only (*d*).

Practice.

654. The application to the High Court under its common law jurisdiction to quash an inquisition is made by motion in the King's Bench Division for a rule or summons calling upon the coroner or officer having custody of the inquisition (*e*) to show cause why a writ of *certiorari* should not issue to remove the inquisition into the King's Bench Division for the purpose of quashing the same (*f*). A rule *nisi* to quash an inquisition upon an objection relating only to the finding as to one person named therein need not be served upon the other or others named (*g*). It is not necessary to insert a clause asking for a writ of *melius inquirendum* in a rule to quash an inquisition (*g*).

Effect of quashing inquisition.

655. If a coroner's inquisition be quashed for informality or cause other than misconduct of the coroner, the King's Bench Division of the High Court may, in the exercise of its common law jurisdiction, order the coroner to take a fresh inquisition *super visum corporis*, unless the body have been so long buried as to make a view thereof unprofitable or insufferable. But if the inquisition be quashed for misconduct of the coroner a *melius inquirendum* will be

(*u*) *R.* v. *Staffordshire Coroner* (1864), 10 L. T. 650.

(*a*) *R.* v. *Carter* (1876), 45 L. J. (Q. B.) 711, where the jury found that the deceased died of poisoning, but that there was no sufficient evidence to show how the poison came to be taken, several persons having been desirous of giving evidence as to the administration of the poison, but the coroner having closed the inquest without taking their evidence, and the inquisition was quashed and the coroner ordered to hold a fresh inquest *super visum corporis* before another jury.

(*b*) *R.* v. *Yorkshire Coroner* (1863), 9 L. T. 424.

(*c*) *Re Daws* (1838), 8 Ad. & El. 936, where it appeared that a coroner's clerk had held an inquest and signed the inquisition in his own name.

(*d*) *R.* v. *Mallet and Chilcote* (1846), 1 Cox, C. C. 336.

(*e*) If the inquisition has been delivered to the clerk of assize etc., the rule must be served upon such clerk (*R.* v. *Oxford Circuit* (*Clerk of Assize*), [1897] 1 Q. B. 370).

(*f*) The practice to be observed upon application will be found in the Crown Office Rules, 1906, 20—24, 27, which by r. 30 are applied to the removal of inquisitions. The motion must be made upon affidavits setting out all the facts on which the applicant relies; see, further, title CROWN PRACTICE.

(*g*) *R.* v. *Mallet and Chilcote*, *supra*.

ordered to be taken before the sheriff or justices or special commissioners, not *super visum corporis*, but upon affidavits or the testimony of witnesses, and this will also be done where the inquisition is quashed for informality but, in the opinion of the court, it would be improper to disinter the body (*h*).

Second inquisition.

656. If a coroner should take an inquisition without view of the body, he may take a second inquisition *super visum corporis*, and the second inquisition is good; for the first was wholly void. But if he takes an inquisition *super visum corporis*, and after this another coroner takes an inquisition upon the same matter, the second inqusition is void, because the first was well taken (*i*). So a coroner has no power, after holding an inquest *super visum corporis* and recording the verdict, to hold a second inquest *mero motu* on the same body, the first inquisition not having been quashed and no writ *melius inquirendum* having been awarded; for the coroner is *functus officio* as soon as the verdict is recorded (*k*). And even if the first inquisition be quashed, the coroner may not cause the body to be disinterred for the purpose of taking a second inquisition, unless the leave of the court be obtained for that purpose (*l*).

Statutory powers of High Court.

657. In addition to their common law jurisdiction (*m*) the High Court of Justice is empowered by statute to quash coroners' inquisitions on certain grounds, and, if it seems fit in any case, to order another inquest to be held either by the same or some other coroner and with or without a view of the body (*n*). The statutory provisions on this subject also enable the court, where any coroner refuses or neglects to hold an inquest which ought to be held, to order such inquest to be held, and are as follows:—

Where the High Court of Justice, upon application made by or under the authority of the Attorney-General, is satisfied either—(1) that a coroner refuses or neglects to hold an inquest which ought to be held, or, (2) where an inquest has been held by a coroner, that by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or otherwise, it is necessary or desirable, in the interests of justice, that another inquest should be held, the court may order an inquest to be held touching the said death, and may, if the court think it just, order the said coroner to pay such costs of and incidental to the application as to the court may seem just, and, where an inquest has been already held, may quash the inquisition on that inquest. The court may order that such

(*h*) *R.* v. *Bunny* (1688), Carth. 72; 2 Hawk. P. C., c. 9, s. 53; *R.* v. *Carter* (1876), 45 L. J. (Q. B.) 711.

(*i*) 2 Hale, P. C. 58, 59.

(*k*) *R.* v. *White* (1860), 3 E. & E. 137.

(*l*) *R.* v. *Saunders* (1718), 1 Stra. 167; *Anon.* (1722), 1 Stra. 533; and compare *R.* v. *Wood* (1908), 73 J. P. 40.

(*m*) See Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 35.

(*n*) Under its common law jurisdiction the King's Bench Division can only order a second inquest to be held by the same coroner and will only do so when it is possible to have a profitable view of the body. If that is impossible, the court may order a further inquiry before commissioners or justices without a view of the body, but not another inquest by the coroner. But apparently the same jury could be impanelled for the second inquest (*R.* v. *Wood, supra*).

SECT. 2. The Inquisition.

inquest shall be held either by the said coroner, or, if the said coroner is a coroner for a county, by any other coroner for the county, or, if he is a coroner of a borough or for a franchise, then by a coroner for the county in which such borough or franchise is situate, or for a county to which it adjoins, and the coroner ordered to hold the inquest will for that purpose have the same powers and jurisdiction as, and be deemed to be, the said coroner. Upon any such inquest, if the case be one of death, it is not necessary, unless the court otherwise order, to view the body, but save as aforesaid the inquest is to be held in like manner in all respects as any other inquest under the Coroners Act, 1887. Any power vested by the foregoing provisions in the High Court of Justice may, subject to any rules of court made in pursuance of the Judicature Act, 1875, and the Acts amending the same, be exercised by any judge of that court (*o*).

Quashing inquisition at trial.

658. A coroner's inquisition charging murder and manslaughter is in effect an indictment (*p*), and, therefore, when the party charged is arraigned upon the inquisition, he has the same rights and opportunities of pleading and demurring thereto, and of applying to the court of trial to quash the inquisition, as he would have if placed upon his trial upon an indictment charging the same offence, and all the rules as to pleading, demurring, and applying to quash which are applicable upon a trial upon indictment are equally applicable upon a trial upon an inquisition (*q*).

SUB-SECT. 6.—*Proceedings upon Inquisition charging Murder or Manslaughter.*

Murder and manslaughter.

659. Where a coroner's inquisition charges a person with the offence of murder or of manslaughter, or of being accessory before the fact to a murder (which latter offence is here included in the expression "murder"), the coroner must issue his warrant for arresting or detaining such person (if such warrant has not previously been issued) and must bind by recognisance (*r*) all such

(*o*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6. For an instance of a new inquiry ordered under this section, see *R.* v. *Graham* (1905), 93 L. T. 371, where the original inquisition contained no finding as to how the deceased came by the injury from which death ensued.

(*p*) *R.* v. *Ingham* (1864), 5 B. & S. 257.

(*q*) For pleading etc. to indictments, see title CRIMINAL LAW AND PROCEDURE.

(*r*) The statutory form of recognisance to prosecute and give evidence is as follows:—" to wit, Be it remembered that on the day of , 19 , each of the following persons, namely, J. K. of and R. S. of [*insert the names of all bound over*] personally came before me, A. B., one of the coroners of our Lord the King for the county [*or, as the case may be*] of and acknowledged to owe to our Sovereign Lord the King the sum of pounds to be levied on his goods and lands by way of recognisance to His Majesty's use if default is made on his part [*or* on the part of I. K.] in the conditions following:—He shall appear personally at the next sessions of oyer and terminer or gaol delivery to be holden at , in and for the county of , there to prosecute and give evidence to the jury that try E. F. [now in custody for the wilful murder of C. D.], upon the inquisition taken before me, the above-named coroner, on view of the body of C. D., and shall not depart the court without leave. Then, if the above conditions are fulfilled, this recognisance shall be void, but otherwise shall remain in full force" (Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 37 and Sched. II.).

persons examined before him as know or declare anything material touching the said offence to appear at the next court of oyer and terminer or gaol delivery at which the trial is to be, then and there to prosecute or give evidence against the person so charged (*s*).

If a witness refuse to enter into the usual recognisance to appear, the coroner by virtue of his office may commit him for contempt (*t*).

Binding over witnesses for defence.

660. It is not the duty of the coroner to bind over witnesses who are called at the inquest for the purpose of exculpating or giving evidence in favour of the person charged by the inquisition (*a*). If, however, the coroner binds over all the witnesses called before him, and the party charged is afterwards indicted, the clerk of indictments acts properly in requiring them all to be put on the back of the bill to be examined by the grand jury (*b*).

Bail.

661. Where the offence is manslaughter, the coroner may, if he thinks fit, accept bail by recognisance (*c*) with sufficient sureties for the appearance of the person charged at the next court of oyer and terminer or gaol delivery at which the trial is to be, and thereupon such person, if in the custody of an officer of the coroner's court or under a warrant of commitment issued by such coroner, shall be discharged therefrom (*d*).

It is the duty of the coroner to cause the recognisance taken before him from a person charged by an inquisition with manslaughter to be taken, so far as circumstances admit, in the statutory form, or in such other form as the Lord Chancellor may from time to time prescribe, and to give notice of the recognisance to every person bound thereby (*e*). If the inquest has been held before the coroner of the King's household the condition of the recognisance must be to appear before the Lord Steward, or, in his absence, before the Treasurer and Comptroller of the King's household (*f*).

If the inquest has been held before the coroner of the King's household the condition of this recognisance must be to appear before the Lord Steward, or, in his absence, before the Treasurer and Comptroller of the King's household (Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 29 (5)).

(*s*) *Ibid.*, s. 5 (1).

(*t*) Sir J. Jervis on Coroners (1829), p. 236; *Ex parte Pater* (1864), 5 B. & S. 299.

(*a*) *R.* v. *Taylor and West* (1840), 9 C. & P. 672.

(*b*) *Ibid.*

(*c*) The statutory form of the recognisance to appear for trial is as follows:—[Commencement as in recognisance to prosecute.] "He shall appear at the next sessions of oyer and terminer or gaol delivery to be holden in and for the county of , and there surrender himself into the custody of the keeper of a gaol in which prisoners committed for trial at those sessions are detained, and plead to the inquisition taken before me, the above-named coroner, on view of the body of C. D., whereby a verdict of manslaughter has been found against him, and shall take his trial upon that inquisition, and shall not depart the court without leave. Then, if the above conditions are fulfilled, this recognisance shall be void, but otherwise shall remain in full force" (Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 37 and Sched. II.).

(*d*) *Ibid.*, s. 5 (2).

(*e*) *Ibid.*, s. 18 (4).

(*f*) *Ibid.*, s. 29 (5).

SECT. 2. The Inquisition.

Forfeiture of recognisance.

Where a recognisance is forfeited at an inquest held before a coroner, the coroner must proceed to act in like manner in respect of such forfeiture as if he had imposed a fine under s. 19 of the Coroners Act, 1887, upon the person forfeiting that recognisance, and the provisions of that section apply accordingly (*g*).

Refusal of bail.

662. In cases where the inquisition finds the offence of murder, and in cases where the inquisition finds the offence of manslaughter, but the coroner in the exercise of his judicial discretion refuses to accept bail for the party charged, application for bail may, as in every other case, be made to the King's Bench Division of the High Court of Justice. The proper course in such case is to apply in the first instance by summons before a judge in chambers for a writ of *habeas corpus*, or to show cause why the party in custody should not be admitted to bail, either before a judge in chambers or before a justice of the peace, in such amount as the judge may direct (*h*). The proceedings before the coroner should at the same time be removed by *certiorari* into the King's Bench Division (*i*) so as to be before the court at the time appointed for showing cause.

Delivery of inquisitions etc. to court.

663. Whenever the inquisition contains a charge of murder or manslaughter, it is the duty of the coroner to deliver the inquisition, depositions and recognisances, with a certificate under his hand that the same have been taken before him, to the proper officer of the court in which the trial is to be, before or at the opening of the court (*k*). Where, however, the inquest has been held before the coroner of the King's household, if the inquisition charges a person with murder or manslaughter, the coroner must return the inquisition, depositions, and recognisances to the Lord Steward, or in his absence, to the Treasurer and Comptroller of the King's household (*l*).

Delivery to Director of Public Prosecutions.

In any case, also, where the Director of Public Prosecutions (*m*) gives notice to any coroner that he has instituted or undertaken or is carrying on any criminal proceeding, it is the duty of such coroner, at the time and in the manner prescribed by statutory regulations, or directed in any special case by an order of the Attorney-General, to transmit to the said Director every recognisance, information, certificate, inquisition, deposition, document, and thing which is connected with the said proceeding, and which the coroner is required by law to deliver to the proper officer of the court in which the trial is to be had, and the said Director is bound, subject to statutory regulations (*n*), to cause the same to be

(*g*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 19 (5). For the procedure in the case of fines, see p. 266, *ante*.

(*h*) Crown Office Rules, 1906, r. 111 ; see title CRIMINAL LAW AND PROCEDURE.

(*i*) For the removal of inquisitions by *certiorari*, see Crown Office Rules, 1906, 20—24, 27, 30, and title CROWN PRACTICE.

(*k*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 5 (3). This provision extends to franchise as well as to county and borough coroners (*ibid.*, s. 30 (4)).

(*l*) *Ibid.*, s. 29 (5).

(*m*) Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 5.

(*n*) Regulations, 1886, r. 5, which provides that every coroner to whom notice has been given under s. 5 of the Prosecution of Offences Act, 1879 (42 & 43 Vict.

delivered to the said proper officer of the court, and is under the same obligation, on the same payment, to deliver to an applicant copies thereof as the said coroner or officer. A failure on the part of a coroner to comply with the foregoing provision is to be deemed a failure to comply with the requirement to deliver the inquisition etc. to the proper officer of the court (*o*).

Coroner's presence at trial.

It is the duty of the coroner to be present in court when any person is tried on an inquisition taken before him; and if he is not present the court may fine him (*p*).

Right to copies of inquisition etc.

664. A person charged by an inquisition with murder or manslaughter is entitled to have from the person having for the time being the custody of the inquisition or of the depositions of the witnesses at the inquest copies thereof on payment of a reasonable sum for the same (*q*).

Depositions of witnesses.

665. It was formerly resolved by all the judges that the deposition of any witness examined on oath before the coroner at an inquest *super visum corporis* was admissible in evidence upon the trial of any person on a charge of the murder or manslaughter of the deceased upon whose body the inquest was held, if it were proved on oath that such witness was dead or unable to travel, or the court were satisfied that such witness was detained by means or procurement of the prisoner (*r*).

It was further held that such depositions, if otherwise admissible, were not excluded by reason that the prisoner had no opportunity of cross-examining the witnesses or was not even present at the inquest, on the ground that, as the coroner is a judicial officer, the courts will intend that the depositions were properly and impartially taken before him (*s*).

In modern times, however, judges have refused to admit such depositions when taken in the absence of the prisoner (*t*), and the opinion has been judicially expressed that the old practice relative to the admissibility of coroners' depositions must be considered

c. 22), shall within three days after the receipt by him of such notice transmit either by post in a registered letter, or, if that is not practicable, by railway or by messenger, to the Director of Public Prosecutions all documents and things which he is by the said section required to transmit, and the Director of Public Prosecutions shall cause all such documents and things to be delivered or sent by post in a registered letter to the proper officer of the court in which the trial is to be had a reasonable time before such trial.

(*o*) For the penalty upon the coroner for failure to comply with such requirement, see Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 9; and p. 255, *ante*.

(*p*) *Re Urwin* (1827), cited Sir J. Jervis on Coroners (1829), p. 274.

(*q*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 18 (5). The sum must not exceed the rate of three halfpence for every folio of ninety words (*ibid.*); but this direction applies only to copies supplied on behalf of the party charged, not to other persons.

(*r*) *Morely's* (*Lord*) *Case* (1666), Kel. 53; also reported *sub. nom. Bromwich's Case* (1666), 1 Lev. 180; *Thatcher* v. *Waller* (1676), T. Jo. 53; *R.* v. *Harrison* (1692), 12 State Tr. 834; Buller, Nisi Prius, 7th ed., p. 239.

(*s*) Buller, Nisi Prius, 7th ed., p. 239; *R.* v. *Eriswell* (*Inhabitants*) (1790), 3 Term Rep. 707, per BULLER, J., at p. 713.

(*t*) *R.* v. *Rigg* (1866), 4 F. & F. 1085; *R.* v. *Wall* (1830), Russell on Crimes and Misdemeanours, 6th ed., Vol. III., p. 572, where part of the deposition had been taken in the presence and part in the absence of the prisoner, and the whole had been read over in the presence of the prisoner.

SECT. 2. The Inquisition.

as no longer in force, and that such depositions stand on the same footing as depositions taken before justices, so that all the provisions of the Indictable Offences Act, 1848 (*a*), apply to them (*b*).

Reading of depositions.

666. The deposition taken before the coroner of a witness who is too ill to travel may be read before the grand jury (*c*); and a similar deposition has been allowed to be read in an action for damages where the witness was beyond the seas (*d*).

Admission by party charged.

667. Although the practice of the courts as to the admissibility of admissions has not been consistent, it now appears to be established that a voluntary statement made on oath before the coroner at an inquest is admissible as evidence against the deponent on his subsequent trial for the murder or manslaughter of the deceased person on whom the inquest was held (*e*), and also on his trial for any crime committed in respect of such deceased person, as rape (*f*), or concealment of birth (*g*), or administering poison with intent to murder (*h*).

Trial on indictment and on inquisition.

668. Where any person is charged by an inquisition with murder or manslaughter, as the offence is also always the subject of inquiry before justices, the person charged may also be committed for trial by such justices, and a bill of indictment in respect of such offence will then be preferred before the grand jury at the assizes or sessions of the Central Criminal Court to which he is committed. If the grand jury find no true bill, the party charged may nevertheless be arraigned upon the inquisition, although in such case it is not unusual for the Crown to offer no evidence upon the inquisition. If a true bill be found and the party charged be tried on the indictment and acquitted, he must afterwards be arraigned upon the inquisition, but he may effectually plead thereto *autrefois acquit*. And so if he be first arraigned and tried upon the inquisition and acquitted, he may effectually plead the acquittal to a subsequent arraignment upon the indictment (*i*).

(*a*) 11 & 12 Vict. c. 42. As to these provisions, see title CRIMINAL LAW AND PROCEDURE.

(*b*) *R.* v. *Butcher* (1900), 64 J. P. 808. If this opinion is correct, the deposition, when admissible, would be admissible if it purported to be signed by the coroner; otherwise it would be necessary to prove it by calling the coroner or proving his signature, and by calling some person who was present at the inquest to show that all requirements of law were complied with (Taylor on Evidence, 10th ed., s. 493, citing *R.* v. *Wilshaw* (1841), Car. & M. 145).

(*c*) *R.* v. *Mooney* (1863), 9 Cox, C. C. 411. It does not appear whether the deposition in this case was taken in the presence or absence of the accused.

(*d*) *Sills* v. *Brown* (1840), 9 C. & P. 601. It is, however, doutful whether this precedent would now be followed.

(*e*) *R.* v. *Sandys* (1841), 2 Mood. C. C. 227, 231; *R.* v. *Bateman* (1866), 4 F. & F. 1068. The practice as to the admission of such depositions has not been uniform; they were not admitted in *R.* v. *Wheeley* (1838), 8 C. & P. 250, or in *R.* v. *Owen* (1840), 9 C. & P. 238; but on the authority of the later cases their admissibility may now be considered settled; see also *R.* v. *Coote* (1873), L. R. 4 P. C. 599.

(*f*) *R.* v. *Owen*, *supra*.

(*g*) *R.* v. *Colmer* (1864), 9 Cox, C. C. 506.

(*h*) *R.* v. *Chesham* (1861), Russell on Crimes and Misdemeanours, 6th ed., Vol. III., p. 520.

(*i*) *R.* v. *Culliford* (1703), 1 Salk. 382; Chitty, Criminal Law, Vol. I., p. 163; 4 Bl. Com. 329. As to the plea of *autrefois acquit*, see title CRIMINAL LAW AND PROCEDURE.

SECT. 3.—*Expenses and Returns of Inquests.*

SECT. 3. Expenses and Returns of Inquests.

SUB-SECT. 1.—*Schedule of Fees and Allowances.*

Schedule of fees etc.

669. The local authority for a county or borough from time to time may make, and when made may alter and vary, a schedule of fees, allowances, and disbursements which on the holding of an inquest may lawfully be paid and made by the coroner holding such inquest (other than the statutory fees payable to medical witnesses), and a copy of every such schedule must be deposited with the clerk of the peace of the county or with the town clerk of the borough, and one other copy delivered to every coroner concerned (*k*). For this purpose the local authority of a county is the county council (*l*), and of a borough the borough council (*m*).

A schedule of fees, allowances, and disbursements made before the 16th September, 1887 (the date of the passing of the Coroners Act, 1887), by a local authority for a county or borough (*n*) has, until a schedule is made in pursuance of that Act, the same effect as if the schedule had been made in pursuance of that Act (*o*).

SUB-SECT. 2.—*Fees of Medical Witnesses.*

Fees of medical witnesses.

670. A legally qualified medical practitioner who has attended at a coroner's inquest in obedience to a summons of the coroner (*p*) is entitled to receive the following remuneration, namely: (1) For attending to give evidence at any inquest at which no post-mortem examination has been made by such practitioner, one guinea; and (2) for making a post-mortem examination of the body of the deceased, with or without an analysis of the contents of the stomach or intestines, and for attending to give evidence thereon, two guineas.

No fee or remuneration, however, is payable to a medical practitioner for the performance of a post-mortem examination instituted without the previous direction of the coroner; and where an inquest is held on the body of a person who has died in a

(*k*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 25. The "fees, allowances, and disbursements" included in the schedule are those which are made by the coroner, not those payable to the coroner, as to which see pp. 222, 227, *ante*. They comprise payments to constables, witnesses, interpreters, and jurors; payments for finding dead bodies, and for hire of room for holding inquest. If in the opinion of the coroner any special expenses ought to be incurred which are not provided for in the schedule, he should apply to the local authority for leave to incur them; if he incurs them without such authority he will be liable to pay them out of his own pocket.

(*l*) *Ibid.*, s. 41 (a), as altered by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xi.). The several ridings of Yorkshire and the several divisions of Lincolnshire are separate counties for all purposes relating to coroners (Yorkshire Coroners Act, 1897 (60 & 61 Vict. c. 39); Lincolnshire Coroners Act, 1899 (62 & 63 Vict. c. 48); see p. 217, *ante*.

(*m*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 41 (b).

(*n*) The local authority for a county at that time was the court of quarter sessions of the county, and in Lincolnshire and Yorkshire the justices of gaol sessions. The local authority for a borough was then, as now, the borough council (*ibid.*, s. 41).

(*o*) *Ibid.*, s. 45 (2).

(*p*) See p. 268, *ante*.

SECT. 3. Expenses and Returns of Inquests.

county or other lunatic asylum, or in a public hospital, infirmary, or other medical institution, or in a building or place belonging thereto, or used for the reception of the patients thereof, whether the same be supported by endowments or by voluntary subscriptions (*q*), the medical officer, whose duty it may have been to attend the deceased person as a medical officer of such institution, is not entitled to such fee or remuneration (*r*).

SUB-SECT. 3.—*Payment of Expenses by and to Coroner.*

Payment of expenses by coroner.

671. A coroner holding an inquest must, immediately after the termination of the proceedings, pay the fees of every medical witness not exceeding the statutory amount (*s*), and all expenses reasonably incurred in and about the holding thereof not exceeding the sums set forth in the schedule of fees, allowances, and disbursements for the time being authorised by the county or borough council, as the case may be, and the sums so paid are to be repaid to him as hereinafter mentioned (*t*).

Coroner's duty to present accounts.

672. Every coroner must, within four months after holding an inquest, cause a full and true account of all sums paid by him as above mentioned to be laid before the council of the county or borough by whom the sums are to be reimbursed to him. Such account must be accompanied by such vouchers as in the circumstances may to the county or borough council seem reasonable, and such council may, if they think fit, examine the said coroner as to the account (a borough council, but not a county council, being entitled to examine him on oath), and, on being satisfied of the correctness thereof, the council must order their treasurer to pay to the coroner the sum due to him on such account, with the addition, in the case of a coroner of a borough, of six shillings and eight pence for each inquest; and the treasurer must pay the same out of the local rate, without any abatement or deduction whatever, and is to be allowed the same on passing his accounts (*u*). For this purpose the local rate is in the case of a county the county

(*q*) As to which institutions are within this provision, see *Horner* v. *Lewis* (1898), 67 L. J. (Q. B.) 524; and as to hospitals generally, title PUBLIC HEALTH ETC.

(*r*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 22; *Horner* v. *Lewis*, *supra*, where the honorary medical officer of a children's and general hospital was held to be bound to attend an inquest without fee or remuneration.

(*s*) As to this, see p. 293, *ante*.

(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 26.

(*u*) *Ibid.*, s. 27. This section provided that the "local authority" might examine the coroner on oath; the "local authority" of a county was in 1887 quarter sessions, and the powers etc. of such "local authority" in respect of coroners' accounts were transferred by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xi.), to the county council, with, however, the express provision in s. 78 (2) of that Act that such transfer should not authorise any county council or any committee thereof to administer an oath. In the case of a coroner, therefore, whose disbursements are repaid by a county council, the power to examine him on oath no longer exists. The "local authority" of a borough, however, was at the time of passing the Coroners Act, 1887 (50 & 51 Vict. c. 71), the borough council (see *ibid.*, s. 41 (b)), and no enactment has since been passed disqualifying a borough council from administering an oath.

rate or rate in the nature of a county rate, and in the case of a borough the borough fund or borough rate (*w*).

Repayment to coroner.

673. The fees, allowances, and disbursements actually paid or made by a coroner holding an inquest, if within the statutory limits, must be repaid to the coroner whether it was proper that the inquest should have been held or not, and the county or borough council have no power to disallow them or any of them, their jurisdiction in this respect being limited to satisfying themselves by examination of the coroner or otherwise that the expenses were really incurred and do not exceed the statutory amounts (*a*).

Franchise coroners.

674. Where a franchise coroner was at the passing of the Coroners Act, 1887 (*b*), paid a salary out of the local rate (*c*), the above-mentioned provisions with respect to the expenses of inquests apply as if such coroner were a coroner for a county (*d*). They also apply to the City of London and the borough of Southwark (*e*).

SUB-SECT. 4.—*Detached Parts of Counties.*

Detached parts of counties.

675. For the purpose of holding coroners' inquests every detached part of a county is to be deemed to be within the county by which it is wholly surrounded, or, where it is partly surrounded by two or more counties, within the county with which it has the longest common boundary (*f*).

The treasurer of every county is required to keep an account of all expenses occasioned to such county by any inquest in or in respect to any such detached part of any other county, and twice in every year to send a copy of such account to the treasurer of the other county to which such detached part belongs, and the last-mentioned treasurer must, out of the moneys in his hand as such treasurer, pay to the treasurer sending the account the sum appearing thereby to be due, together with all reasonable charges for making and sending the account (*g*).

Any difference which may arise concerning the said account, if not adjusted by agreement, is to be determined by an arbitrator, who is to be a barrister-at-law nominated on the application of

(*w*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 41 (c).

(*a*) *R.* v. *Carmarthenshire Justices* (1847), 10 Q. B. 796, decided under stat. 7 Will. 4 & 1 Vict. c. 68, which was similar in terms to s. 27 of the Coroners Act, 1887 (50 & 51 Vict. c. 71). This case also decided that a county coroner himself was not entitled to any remuneration for holding an inquest unless in the judgment of quarter sessions it was proper that such inquest should have been held; but now that county coroners are paid by salary instead of fees, this part of the decision is no longer of consequence. It would appear that if a borough coroner holds an inquest he is entitled to the fee of 6*s.* 8*d.* independently of the propriety of holding such inquest; see *R.* v. *Gloucestershire Justices* (1857), 7 E. & B. 805.

(*b*) September 16, 1887.

(*c*) For the meaning of "local rate," see *supra*.

(*d*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 30 (1).

(*e*) *Ibid.*, s. 31.

(*f*) *Ibid.*, s. 40 (1). As to detached parts of counties, see p. 221, *ante*.

(*g*) *Ibid.*, s. 40 (2).

SECT. 3. Expenses and Returns of Inquests.

either party by one of the justices of assize of the last preceding circuit or of the next succeeding circuit. Such arbitrator may adjourn the hearing from time to time and require all such information from either party as appears to him necessary, and his award is final. He must also assess the costs of the arbitration and direct by whom and out of what fund the same shall be paid (*h*).

SUB-SECT. 5.—*Returns by Borough Coroners.*

Returns of inquests in boroughs.

676. Every coroner of a borough must on or before the first day of February in every year make and transmit to a Secretary of State a return in writing, in such form and containing such particulars as the Secretary of State from time to time directs, of all cases in which an inquest has been held by him, or by some person in lieu of him, during the year ending on the thirty-first day of December immediately preceding (*i*).

Part V.—Inquests on Fires in the City of London.

Fires in City of London.

677. A coroner generally has no jurisdiction to hold an inquest respecting the origin of a fire (*k*), but the coroner of the City of London has special statutory powers in this respect.

In any case where loss or injury by fire within the City of London and the liberties thereof has been brought to the knowledge of the Commissioner of City Police or the Chief Officer of the Metropolitan Fire Brigade it is the duty of such commissioner or chief officer forthwith to report the same to the coroner of the City of London (*l*), and in case of loss or injury by fire within the City of London and the liberties thereof situate in the county of Middlesex it is the duty of such coroner to consider the report. A coroner's inquest must be held respecting the same if either the Lord Mayor for the time being, the Lord Chief Justice of England, or one of His Majesty's principal Secretaries of State so order, or if the coroner be of opinion that proper cause for such an inquiry exists (*m*).

Powers and duties of coroners.

678. For the purpose of holding the inquest the coroner and his deputy respectively have and may lawfully exercise the same jurisdictions, authorities, functions, powers, duties, and obligations for compelling the attendance of jurymen, witnesses, and others, of administering oaths, taking recognisances, taking evidence, making payments and allowing expenses, and of doing all and any judicial,

(*h*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 40 (3).
(*i*) *Ibid.*, s. 28.
(*k*) *R.* v. *Hertford* (1860), 3 E. & E. 115, where prohibition was granted against a coroner restraining him from continuing to hold such an inquest.
(*l*) City of London Fire Inquests Act, 1888 (51 & 52 Vict. c. xxxviii.), s. 3.
(*m*) *Ibid.*, s. 2.

magisterial, formal, or necessary acts in all respects as they have with regard to inquests upon view of a dead body (*n*).

Procedure.

679. The inquest is to be held in the same manner with regard to the number and constitution of the jury, the qualifications of the jurymen, the mode of examining witnesses and taking their depositions, and in all other respects as nearly as may be as if it were an inquest held by the coroner or his deputy upon view of a dead body (*o*).

Verdict of arson.

680. Upon the inquest it is the duty of the coroner or his deputy to inquire into the cause and circumstances of such fire and all such matters connected therewith and means for preventing the same as to the said coroner or his deputy holding the inquest seem fit, and also whether there is ground for believing that the fire was caused by the wilful and unlawful act of any person or persons, whether known or unknown, under such circumstances as to render him or them guilty of arson, and if such person or persons be known, and the evidence warrant it, the jury may find a verdict of arson against him or them in order that he or they may be placed on his or their trial for such offence, and the verdict and inquisition have the force and effect of an indictment; provided that if any person with regard to whom such verdict is found was not present at the inquest he must be taken before a magistrate sitting at the Mansion House or Guildhall justice rooms as an accused person to answer such charge (*p*).

Depositions.

681. The coroner or his deputy holding the inquest must take down in writing and sign the depositions of the witnesses (*q*), and within seven days after the termination of such inquest report in writing to the Lord Mayor and to the Home Secretary the result of the inquest and send a copy of the depositions and any remarks thereon as may be deemed necessary. Copies of the report or depositions must be supplied by the coroner to any person demanding the same upon payment of twopence per folio of seventy-two words (*r*).

Power to view premises.

682. For the purpose of the inquest the coroner or his deputy and the jury and such person or persons as the jury may require for their assistance may enter and view any premises or place within the said City of London and the liberties thereof situate in the county of Middlesex where the fire has happened or where it may be suspected to have originated, and have all reasonable access through other premises within such limits for that purpose (*s*).

(*n*) City of London Fire Inquests Act, 1888 (51 & 52 Vict. c. xxxviii.), s. 4.
(*o*) *Ibid.*, s. 5.
(*p*) *Ibid.*, s. 6.
(*q*) *Ibid.*, s. 7.
(*r*) *Ibid.*, s. 8.
(*s*) *Ibid.*, s. 9.

CORPORAL OATH.

See CRIMINAL LAW AND PROCEDURE; EVIDENCE.

CORPORAL PUNISHMENT.

See CRIMINAL LAW AND PROCEDURE; EDUCATION; INFANTS AND CHILDREN.

CORPORATIONS.

[N.B.—This article deals with the general principles of law applicable to all corporations. For the law applicable to a particular class of corporations reference must be made to the article dealing with such class. A list of such articles will be found at the end of this table of contents.—EDS.]

PAGE

PART I. THE NATURE OF CORPORATIONS - - - - 301
SECT. 1. DEFINITIONS AND CHARACTERISTICS - - - - 301
SECT. 2. CLASSIFICATION - - - - - - - - 303
Sub-sect. 1. In General - - - - - - - 303
Sub-sect. 2. Corporations Aggregate - - - - - 305
Sub-sect. 3. Corporations Sole - - - - - - 305
SECT. 3. THE NAME - - - - - - - - - 306
SECT. 4. THE SEAL - - - - - - - - - 309
SECT. 5. DOMICIL - - - - - - - - - 311
Sub-sect. 1. English Corporations - - - - - 311
Sub-sect. 2. Foreign Corporations - - - - - 312
PART II. THE CREATION OF CORPORATIONS - - - - 313
SECT. 1. IN GENERAL - - - - - - - - 313
SECT. 2. BY COMMON LAW - - - - - - - 314
SECT. 3. BY CHARTER - - - - - - - - 314
Sub-sect. 1. Grant and Acceptance of Charters - - - 314
Sub-sect. 2. Interpretation of Charters - - - - 317
Sub-sect. 3. New Charters - - - - - - - 318
SECT. 4. BY STATUTE - - - - - - - - 320
SECT. 5. BY PRESCRIPTION - - - - - - - 321
PART III. THE MEMBERS - - - - - - - - 322
SECT. 1. IN GENERAL - - - - - - - - 322
SECT. 2. QUALIFICATION - - - - - - - - 322
SECT. 3. RIGHTS AS AGAINST THE CORPORATION - - - 323
SECT. 4. DISFRANCHISEMENT - - - - - - - 324
PART IV. GOVERNMENT - - - - - - - - - 325
SECT. 1. OFFICERS - - - - - - - - 325
Sub-sect. 1. Appointment of Officers - - - - - 325
Sub-sect. 2. Powers and Duties - - - - - - 329
Sub-sect. 3. Vacation of Office (Amotion) - - - - 330
SECT. 2. REGULATIONS - - - - - - - - 334
Sub-sect. 1. In General - - - - - - - 334
Sub-sect. 2. Power to make Bye-laws - - - - - 334
Sub-sect. 3. Validity of Bye-laws - - - - - 336

PART IV. GOVERNMENT—*continued.*

SECT. 2. REGULATIONS—*continued.* PAGE

Sub-sect. 4. Penalties - 339
Sub-sect. 5. Proof of Bye-laws - 340
Sub-sect. 6. Effect of Usage - 340
Sub-sect. 7. Statutory Regulations - 341

SECT. 3. MEETINGS - 341

Sub-sect. 1. Convention of Meetings - 341
Sub-sect. 2. The Quorum - 343
Sub-sect. 3. Proceedings at Meetings - 345
Sub-sect. 4. Voting - 348
Sub-sect. 5. Elections of Members and Officers - 350
(1) Power to Elect - 350
(2) Who may Elect - 351
(3) The Election - 352

SECT. 4. EXTERNAL GOVERNMENT OR VISITATION - 355

PART V. POWERS AND LIABILITIES - 356

SECT. 1. IN GENERAL - 356

SECT. 2. LIMITATION OF POWERS (*Ultra Vires*) - 359

SECT. 3. OWNERSHIP OF PROPERTY - 365

Sub-sect. 1. In General - 365
Sub-sect. 2. Mortmain - 367
Sub-sect. 3. Acquisition of Land - 371
Sub-sect. 4. Nature of Estate - 373
Sub-sect. 5. Alienation of Land - 375
Sub-sect. 6. Property other than Land - 377
Sub-sect. 7. Liability to Taxation - 377

SECT. 4. IN CONTRACT - 379

Sub-sect. 1. In General - 379
Sub-sect. 2. Necessity for the Seal - 380
Sub-sect. 3. When the Seal may be dispensed with - 382

SECT. 5. IN TORT - 386

SECT. 6. CRIMINAL LIABILITY - 390

SECT. 7. LEGAL PROCEEDINGS - 392

Sub-sect. 1. In General - 392
Sub-sect. 2. Procedure - 394

PART VI. DISSOLUTION - 397

SECT. 1. SURRENDER - 397

SECT. 2. FORFEITURE - 397

SECT. 3. REVOCATION - 398

SECT. 4. INSUFFICIENCY OF MEMBERS - 399

SECT. 5. BY LEGAL PROCEEDINGS - 400

SECT. 6. EFFECT OF DISSOLUTION - 401

For Banking Companies - *See title* BANKERS AND BANKING.
Boards of Guardians - ,, POOR LAW.
Building Societies - ,, BUILDING SOCIETIES.
Burial Boards - ,, BURIAL AND CREMATION.
Canal Companies - ,, RAILWAYS AND CANALS.
Cemetery Companies - ,, BURIAL AND CREMATION.
Charitable Corporations - ,, CHARITIES.
Companies generally - ,, COMPANIES.
County Councils - ,, LOCAL GOVERNMENT.
District Councils - ,, LOCAL GOVERNMENT.

For Ecclesiastical Corporations	*See title*	ECCLESIASTICAL LAW.
Electrical Companies	,,	ELECTRIC LIGHT, TRACTION AND POWER.
Foreign Corporations	,,	COMPANIES; CONFLICT OF LAWS.
Freehold Land Societies	,,	INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.
Friendly Societies	,,	FRIENDLY SOCIETIES.
Gas Companies	,,	GAS.
Industrial and Provident Societies	,,	INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.
Insurance Companies	,,	INSURANCE.
Light Railway Companies	,,	TRAMWAYS AND LIGHT RAILWAYS.
Metropolitan Borough Councils	,,	METROPOLIS.
Municipal Corporations	,,	LOCAL GOVERNMENT.
Parish Councils	,,	LOCAL GOVERNMENT.
Railway Companies	,,	RAILWAYS AND CANALS.
Telegraph and Telephone Companies	,,	TELEGRAPHS AND TELEPHONES.
Tramway Companies	,,	TRAMWAYS AND LIGHT RAILWAYS.
Unincorporated Associations	,,	CLUBS; CONTRACT; LOAN SOCIETIES; PARTNERSHIP; SCIENTIFIC AND LITERARY SOCIETIES.
Water Companies	,,	WATER SUPPLY.

Part I.—The Nature of Corporations.

SECT. 1.—*Definitions and Characteristics.*

Corporation aggregate

683. A corporation aggregate has been defined as a collection of many individuals united into one body under a special denomination, having perpetual succession (*a*) under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the designs of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence (*b*).

(*a*) A corporation, however, may be created by the Crown for a limited period (Chartered Companies Act, 1837 (7 Will. 4 & 1 Vict. c. 73), s. 29); see p. 315, *post*.

(*b*) Kyd on Corporations (1793), Vol. I., p. 13. The earliest definition of a corporation of which a record has been found is in *Smith's* (*Sir James*) *Case* (1691), Carth. 217, where it is stated to be "an artificial body composed of divers constituent members like the human body, and that the ligaments of this body politic or artificial body are the franchises and liberties thereof which bind and unite all its members together, and the whole frame and essence of the corporation consist therein." In 1691 Lord HOLT, C.J. (Holt (K. B.), 168), defined a corporation as an *ens civile*, a *corpus politicum*, a *collegium*, an *universitas*, a *jus habendi et agendi*. For a later definition see Grant, Law of Corporations (1850); p. 4, where a corporation is defined as "a continuous identity; endowed at its creation with capacity for endless duration; residing in the grantees of it and their successors, its acts being determined by the will of a majority of the existing body of its grantees or their successors at any given time, acting within the limits imposed by the constitution of their body politic, such will

SECT. 1. Definitions and Characteristics.

Corporation sole.

684. A corporation sole is a body politic having perpetual succession, constituted in a single person, who, in right of some office or function, has a capacity to take, purchase, hold, and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alien) lands, tenements and hereditaments, to him and his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous ; that is, there may be, and mostly are, periods in the duration of a corporation sole, occurring irregularly, in which there is a vacancy, or no one in existence in whom the corporation resides and is visibly represented (*c*).

Continuity essential.

685. An essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member or members and his or their successors to infinity are one (*d*). Thus, where a liability or obligation is once binding on a corporation, whether sole or aggregate, it will bind the successors, even though they be not expressly named (*e*).

Corporation distinct from its members.

686. The nature of a corporation may be shown by contrasting it, as a legal conception, with the individuals or mass of individuals in which it resides. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself (*f*); for a corporation is a legal *persona* just as much as an individual (*g*). If a man trusts a corporation, he trusts that legal *persona*, and must look to its assets for payment; he can only call upon individual members to contribute in case the Act or charter creating the corporation has so provided (*h*). The liability

being signified to strangers by writing under the common seal; having a name, and under such name a capacity for taking, holding and enjoying all kinds of property, a qualified right of disposing of its possessions, and also a capacity for taking, holding and enjoying, but inalienably, liberties, franchises, exemptions and privileges; together with the right and obligation of suing and being sued only under such name."

(*c*) Grant, Law of Corporations (1850), p. 626.

(*d*) *Ibid.*, p. 20.

(*e*) Co. Litt. 144 b, n. 2; see p. 379, *post*. Where by an Act of Parliament a power is given to a corporation simply, as, for instance, to a bishop without any mention of his Christian name, the power will vest in his successors without the words "for the time being" (*Bentley* v. *Ely* (*Bishop*) (1726), Fortes. Rep. 298; reversed without reference to this point (*ibid.*, 300, H. L.). As to liability for breach of trust, see *A.-G.* v. *Newbury Corporation* (1834), 3 My. & K. 647; and p. 367, *post*.

(*f*) *Acland* v. *Lewis* (1860), as reported K. & G. 334, *per* ERLE, C.J., at p. 343, where four persons, who had obtained a charter whereby they, and all other persons who might subsequently join them, became incorporated, although at the time they were the only persons actually interested in the corporate property, were held bound to deal with the property with regard to the interests of the corporation as an entity distinct from themselves, and not as the four in their private capacities might jointly agree; *Society for the Illustration of Practical Knowledge* v. *Abbott* (1840), 2 Beav. 559; see *post passim*, and particularly as to the ownership of property, pp. 365 *et seq.*, *post;* compare *Salomon* v. *Salomon & Co.*, [1897] A. C. 22; *Re Wragg, Ltd.*, [1897] 1 Ch. 796, C.A.; *Munkittrick* v. *Perryman and Hands* (1896), 74 L. T. 149.

(*g*) *Re Sheffield and South Yorkshire Permanent Building Society* (1889), 22 Q. B. D. 470, *per* CAVE, J., at p. 476. On this point see further pp. 356 *et seq.*, *post*.

(*h*) *Re Sheffield and South Yorkshire Permanent Building Society*, *supra*.

of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation, and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess but a nominal interest in its property, or hold their interest in trust for him (*i*). Notice to an individual who happens to be a member of a corporation aggregate is not equivalent to notice to the corporate body (*k*); and where an action is maintainable by and in the name of a corporation, it cannot be maintained by individual members of the corporation (*l*). After the dissolution of a corporation the members, in their natural capacities, can neither recover debts which are due to the late corporation nor be charged with debts contracted by it (*m*).

Bodies which are not corporations.

687. There are many associations and societies of individuals that are not corporations; as, for instance, partners or persons jointly interested in particular property (*n*), and mere voluntary societies, such as the Inns of Court, although they have a common seal (*o*), or the members of a lodge of Freemasons (*p*).

SECT. 2.—*Classification.*

SUB-SECT. 1.—*In General.*

Sole and aggregate.

688. Corporations are here considered under two main heads —namely, corporations sole and corporations aggregate (*q*).

(*i*) *Salomon* v. *Salomon & Co.*, [1897] A. C. 22.

(*k*) *Steward* v. *Dunn* (1844), 1 Dow. & L. 642, 649.

(*l*) *Mozley* v. *Alston* (1847), 1 Ph. 790. Thus, two individual members cannot assume the right and power to sue, on behalf of themselves and all other the members of the corporation except those against whom the action is brought, in respect of an injury to the corporation (*Foss* v. *Harbottle* (1843), 2 Hare, 461, 490). Where a deed, which was signed and sealed by certain persons, purported to be signed and sealed by a corporation of which they held themselves out to be the officers, an action on the deed, brought by those persons, was dismissed as having been brought by the wrong parties (*Cooch* v. *Goodman* (1842), 2 Q. B. 580, where, as a matter of fact the alleged corporation did not exist). As to this point, see further p. 394, *post*.

(*m*) *Naylor* v. *Cornish* (1684), 1 Vern. 311, n. (1).

(*n*) *Lloyd* v. *Loaring* (1802), 6 Ves. 773; commented on in *Re Lead Co.'s Workmen's Fund Society*, [1904] 2 Ch. 196, 203; *Beaumont* v. *Meredith* (1814), 3 Ves. & B. 180, where a society called the "Benevolent Union Society," being a society for the relief of its members in case of sickness by means of a fund raised by subscription of the members, was held to be not a corporation, but a partnership; *A.-G.* v. *Chester Corporation* (1849), 1 H. & Tw. 46, where a charity, founded in the twelfth century, and commonly known as "The Master, Brethren and Sisters of the Hospital of St. John the Baptist," whose lands with the mastership of the hospital were subsequently granted by the Crown to the corporation of Chester, was held not to be a corporation, the leases of the hospital lands never being granted under a corporate seal, but in the private name of the master for the time being and sealed with his own private seal, the brethren and sisters being stated to consent. See further title PARTNERSHIP. As to voluntary associations, see also title CONTRACT, Vol. VII., pp. 339 *et seq.*

(*o*) Grant, Law of Corporations (1850), p. 58, n. (a). For an instance of a voluntary society having no constitution, see *Brown* v. *Dale* (1878), 9 Ch. D. 78; and see titles BARRISTERS, Vol. II., p. 358; CHARITIES, Vol. IV., p. 258.

(*p*) *Lloyd* v. *Loaring*, *supra*.

(*q*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 29 b; 1 Roll. Abr. (1668),

SECT. 2. Classification.

Corporations both sole and aggregate may also be classified as ecclesiastical (*r*) and lay.

Ecclesiastical and lay.

Ecclesiastical corporations comprise corporations sole, such as a bishop (*s*), and corporations aggregate, such as the dean and chapter of a cathedral church (*t*). Lay corporations may be divided into trading and non-trading corporations.

Trading and non-trading.

Trading corporations comprise (1) chartered companies, such as the Chartered Company of South Africa (*u*); (2) companies incorporated by special Acts of Parliament, such as railway companies, canal companies (*w*) and the like, including joint-stock companies incorporated under special Acts, to which the Companies Clauses Consolidation Act, 1845, applies (*a*); and (3) companies incorporated under the Companies (Consolidation) Act, 1908 (*b*).

Non-trading corporations may be divided into:—(1) Corporations having statutory powers of local government, such as municipal corporations, urban district councils, rural district councils and parish councils (*c*); improvement or inclosure commissioners or trustees (*d*); navigation commissioners (*e*); and port and harbour commissioners or trustees (*f*); (2) eleemosynary corporations (*g*),

p. 512; and see Grant, Law of Corporations (1850), pp. 1, 626. For the purposes of classification merely, a third class should be added, namely, *quasi*-corporations, that is, corporate bodies, sole or aggregate, which only partially fulfil the definition of a corporation. Instances of *quasi*-corporations sole are the Lord Chancellor, the Lord Chief Justice, the Treasurer for the time being of Friendly Societies (see Grant, Law of Corporations (1850), p. 661), and the Chamberlain of London (see *Byrd* v. *Wilford* (1596), 2 Cro. Eliz. 464). Instances of *quasi*-corporations aggregate are churchwardens (Grant, Law of Corporations (1850), p. 600), churchwardens and overseers (*ibid.*, p. 607), guardians of the poor (*ibid.*, p. 616), boards of health (see *Manchester, Sheffield and Lincolnshire Rail. Co.* v. *Worksop Board of Health* (1856), 23 Beav. 198). But the distinction does not seem to be of importance, except for the purpose of classification and to draw attention to the fact that these bodies are not fully constituted corporations. Again, corporations have been divided into spiritual and temporal (Cowell's Interpreter, 1672), but this division is of no practical value.

(*r*) As to ecclesiastical corporations, see title ECCLESIASTICAL LAW.

(*s*) Roll. Abr. 512.

(*t*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 29 b.

(*u*) See Chartered Companies Act, 1837 (7 Will. 4 & 1 Vict. c. 73), and Chartered Companies Act, 1884 (47 & 48 Vict. c. 56); and title COMPANIES, Vol. V.

(*w*) As to these, see titles COMPANIES, Vol. V.; GAS; RAILWAYS AND CANALS; WATER SUPPLY.

(*a*) 8 & 9 Vict. c. 16; see title COMPANIES, Vol. V.

(*b*) 8 Edw. 7, c. 69; see title COMPANIES, Vol. V.

(*c*) As to these, see title LOCAL GOVERNMENT.

(*d*) See *Ex parte Newport Marsh Trustees* (1848), 16 Sim. 346.

(*e*) See *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349.

(*f*) See *Mersey Docks and Harbour Board Trustees* v. *Gibbs* (1866), L. R. 1 H. L. 93. The Master, Wardens and Assistants, of the Guild, Fraternity or Brotherhood of the Most Glorious and Undivided Trinity and of St. Clement in the parish of Deptford Strond in the county of Kent, commonly known as Trinity House, constitute a corporation (see stat. 6 & 7 Will. 4, c. 79 (1836)).

(*g*) *Philips* v. *Bury* (1694), as reported 2 Term Rep. 346, 353. An eleemosynary corporation is one which is for the perpetual distribution of the free alms or bounty of the founder to such persons as he has directed (1 Bl. Com. 471; Kyd on Corporations, Vol. I., p. 25).

which comprise charitable institutions (*h*), benevolent institutions, such as St. Thomas's Hospital (*i*), institutions for the advancement of instruction and learning, as, for instance, the universities (*k*) and colleges (*l*), and the governor and trustees of a school (*m*), and institutions for the advancement of the arts and sciences, as, for instance, the Royal Society (*n*).

SUB-SECT. 2.—*Corporations Aggregate.*

Corporations aggregate.

689. A corporation aggregate may be either a mere body, composed of constituent parts no one of which differs essentially from another (*o*); or it may be a body with a head or other distinct member, the existence of which is essential to the vitality, so to speak, of the body as a whole (*p*).

A corporation aggregate has only one capacity, namely, its corporate capacity; so that a conveyance to a corporation aggregate can only be to it in its corporate capacity (*q*).

SUB-SECT. 3.—*Corporations Sole.*

Examples of corporations sole.

690. Corporations sole, though for the most part ecclesiastical, are not confined to that class (*r*). Thus, the Crown is a corporation sole (*s*). The Postmaster-General is a corporation sole for the purpose of acquiring and holding land (*t*), and in his corporate capacity can purchase (*u*), sell and grant, or take leases of land (*w*), and transmit the same to his successors. The Treasury Solicitor is a corporation sole, with a capacity to acquire and hold lands, securities, and property of every description, to sue and be sued, to execute deeds, to make leases, to enter into engagements binding on himself and his successors in office, and to do all acts necessary or expedient to be done in the execution of the duties of his office (*x*). Similarly, the Public Trustee is a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under that name like any other corporation sole (*a*).

(*h*) As to charitable institutions, see title CHARITIES, Vol. IV., pp. 282 *et seq.*

(*i*) Incorporated in 1553.

(*k*) *R.* v. *Cambridge* (*Vice-Chancellor*) (1765), 3 Burr., 1657.

(*l*) As to universities and colleges, see titles CHARITIES, Vol. IV., pp. 282, 283; EDUCATION.

(*m*) *Re Shrewsbury School* (1836), 1 My. & Cr. 632.

(*n*) Incorporated by royal charter in 1662.

(*o*) *Sutton's Hospital Case* (1612), 10 Co. Rep., 23 a, 30 b. An instance of such a body is the Conservators of the River Thames, under the Thames Conservancy Act, 1857 (20 & 21 Vict. c. cxlvii.), s. 2.

(*p*) *Sutton's Hospital Case, supra*, at p. 29 b. Instances of a corporation with a head are, a mayor and commonalty, and a dean and chapter.

(*q*) *Fulmerston* v. *Steward* (1555), 1 Plowd. 102 b.

(*r*) 1 Bl. Com. 477; Co. Litt. 46 b; *Fulwood's Case* (1591), 4 Co. Rep. 64 b; *Arundel's Case* (1615), Hob. 64; *Howley* v. *Knight* (1849), 19 L. J. (Q. B.) 3.

(*s*) Co. Litt. 15 b, n. 4. See title CONSTITUTIONAL LAW, Vol. VI., pp. 325, 479, 493.

(*t*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 45; as to the Postmaster-General, see title POST OFFICE.

(*u*) *Ibid.*, s. 46.

(*w*) *Ibid.*, s. 47.

(*x*) Treasury Solicitor Act, 1876 (39 & 40 Vict. c. 18), s. 1.

(*a*) Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 1 (2).

SECT. 2. Classification.

An archbishop (*b*), a bishop (*c*), a prebendary or canon (*d*), a dean (*e*), an archdeacon (*f*), a parson (*f*), a vicar (*g*), and a vicar choral (*h*) are each a corporation sole. Perpetual cures and benefices which have been augmented by the Governors of Queen Anne's Bounty, and the ministers duly nominated and licensed thereto, and their successors, are corporations sole (*i*).

Double capacity.

Unlike a corporation aggregate, a corporation sole has a double capacity, namely, its corporate capacity and its natural or individual capacity; so that a conveyance to a corporation sole may be in either capacity (*k*), according as he takes to him and his successors (corporate) or to him and his heirs (natural) (*l*).

Personalty.

A corporation sole is, as a general rule, incapable of taking goods, chattels, choses in action, or any personalty in succession (*m*). But by custom he may sue upon securities given to his predecessor (*n*).

Presumption.

The occupant of a corporation sole is presumed to have been duly in possession of his office until the contrary is proved (*o*).

SECT. 3.—*The Name.*

Name essential.

691. A name (*p*), even though it be fictitious (*q*), is essential to a corporation (*r*), and such name must be either expressed in the grant or statute or implied from the nature of it (*s*). It is not

(*b*) 1 Roll. Abr. 512.

(*c*) Co. Litt. 15 b, n. 4. But a Roman Catholic bishop is not a corporation sole (*A.-G.* v. *Power* (1809), 1 Ball & B. 145, 149); and see *Re Lalor* (1901), 85 L. T. 643; *Kehoe* v. *Lansdowne* (*Marquess*), [1893] A. C. 451, *per* Lord HERSCHELL, at p. 457.

(*d*) *Mirehouse* v. *Rennell* (1833), 1 Cl. & Fin. 527, 538, H. L.

(*e*) There are various kinds of deans, some only of which are corporations sole (1 Bl. Com. 469).

(*f*) See *Tufnell* v. *Constable* (1838), 7 Ad. & El. 798.

(*g*) 1 Bl. Com. 469.

(*h*) *Gleaves* v. *Parfitt* (1860), 7 C. B. (N. S.) 838.

(*i*) Queen Anne's Bounty Act, 1714 (1 Geo. 1, stat. 2, c. 10), s. 4.

(*k*) *Fulmerston* v. *Steward* (1555), 1 Plowd. 102, 102 b.

(*l*) Grant, Law of Corporations (1850), p. 626.

(*m*) *Ibid.*; and see p. 377, *post*.

(*n*) *Byrd* v. *Wilford* (1596), 2 Cro. Eliz. 464.

(*o*) *Monke* v. *Butler* (1614), 1 Roll. Rep. 83; *Powel* v. *Milbank* (1773), 2 Wm. Bl. 851, 853, citing *Sherard's Case* (*circa* 1763); Grant, Law of Corporations (1850), p. 637.

(*p*) The name of a corporation in grants or conveyances must be the same in substance as the proper name of the corporation, although it need not be the same in syllables and words, and therefore where a select body is given, by Act of Parliament, authority to do certain acts under the corporate seal, those acts should be expressed to be done in the name of the corporation and not in that of the select body (*R.* v. *Haughley* (*Inhabitants*) (1833), 1 Nev. & M. (K. B.) 525, *per* PARKE, J., at p. 529).

(*q*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a; 32 a.

(*r*) *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349, *per* LITTLEDALE, J., at p. 384.

(*s*) Thus, when the King incorporates the inhabitants of Dale with power to choose a mayor annually, incorporation by the name of the mayor and commonalty will be held to have been intended (*College of Physicians* v. *Salmon* (1701), Holt (K. B.), 171).

necessary that the name should be connected with some definite place (*t*), except where it is so provided by statute (*u*).

A corporation may be named by a private person (*a*), but the name, by whomsoever conferred, must be sanctioned directly or indirectly by the authority of the Crown or Parliament (*b*).

More than one name.

692. A corporation may have different names for different purposes (*c*). It may have more than one name by prescription, or by prescription and by grant, but not by grant alone (*d*). Hence, if a corporation have a name by grant, and subsequently receive another name by grant, the former name will be extinguished by the latter (*e*). A modern corporation, however, cannot prescribe to have a name different from that by which it was incorporated (*f*).

Use of name.

693. A corporation aggregate may act by its corporate name without showing the proper names of its members; but a corporation sole must use his name of baptism (*g*). A corporation aggregate must prosecute in its corporate name, and not in the proper name or names of the persons of whom it happens to be composed at the time (*h*), and may sue by its name of incorporation, although it has an express power to sue by another (*i*). In some cases a corporation is expressly authorised by statute to sue and be sued in the name of one of its officers (*j*).

Change of name.

694. A corporation may have its name changed (*k*), by royal charter or by Act of Parliament (*l*), without thereby depriving it of

(*t*) Grant, Law of Corporations (1850), pp. 53, 54; see also *Sherborn* v. *Lewis* (1597), Gouldsb. 120, p. 7. The rule was formerly different (*Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 29 b).

(*u*) Thus, in the case of a municipal corporation, the name of the borough or city (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 8), in the case of a parish council, the name of the parish (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 3 (9)), in the case of a rural district council, the name of the district (*ibid.* s. 24 (7)), must form part of the name.

The Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), by s. 3 (i.), (ii.), provides that in the case of a company falling within its provisions, the memorandum of association must specify the part of the United Kingdom in which its registered office is to be situate.

(*a*) *Sutton's Hospital Case*, *supra*.

(*b*) *Ibid.*, at p. 28 b.

(*c*) *College of Physicians* v. *Butler* (1632), W. Jo. 261.

(*d*) *Knight* v. *Wells Corporation* (1696), 1 Ld. Raym. 80.

(*e*) *Ibid.*

(*f*) *R.* v. *Haughley* (*Inhabitants*) (1833), 1 Nev. & M. (K. B.) 525, *per* DENMAN, C.J., at p. 529.

(*g*) *Newton* v. *Travers* (1696), 3 Salk. 103; as, for instance, Randall Cantuar. and William Ebor. Compare p. 392, *post*.

(*h*) *R.* v. *Patrick and Pepper* (1783), 1 Leach, 253. And see *Marshall's Valve Gear Co., Ltd.* v. *Manning, Wardle & Co., Ltd.*, [1909] 1 Ch. 267.

(*i*) *College of Physicians* v. *Salmon* (1701), 2 Salk. 451.

(*j*) For an instance, see *R.* v. *St. Katharine Dock Co.* (1832), 4 B. & Ad. 360. As to industrial and provident societies suing and being sued in their corporate name, see *Linton* v. *Blakeney Industrial Society* (1865), 3 H. & C. 853, and *Queensbury Industrial Society* v. *Pickles* (1865), 3 H. & C. 857, decided under the Industrial and Provident Societies Act, 1862 (25 & 26 Vict. c. 87); and title INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.

(*k*) *Anon.* (1435), Jenk., case 94, p. 99.

(*l*) *R.* v. *Haughley* (*Inhabitants*), *supra*; and see *R.* v. *Whitmarsh* (1850), 14 Q. B. 803; *Re Sheffield, Rotherham, and Chesterfield Fire and Life Insurance Co.* (1847),

SECT. 3. The Name.

or affecting any of its rights, franchises, privileges or obligations (*m*), whether they originated by grant or prescription (*n*).

Where a corporation has had its name changed, it must prescribe in its ancient name down to the time when that name was superseded by the new name, and thenceforward in the new name (*o*). And all legal proceedings should be in the new name (*p*). Thus, it should sue in its new name for a debt that accrued due before the change of name (*q*).

Misnomer.

695. A grant made to a corporation by any other than its true name is void (*r*). An error in name will not, however, render a grant bad, if the name given is sufficient to indicate the true intention of the grantor and to clearly distinguish the grantee from others (*s*). And where, in a lease granted by a corporation, the name of the corporation has been mis-stated, the court will, if the lease is in other respects good, maintain it and not allow the corporation to take advantage of the error (*a*).

A corporation should sue in its right name in respect of a gift or obligation made to it in a wrong name (*b*).

Mere misdescription or misnomer, as it was formerly called, of a body corporate in legal proceedings is a matter which can be rectified by amendment; but where the body corporate mentioned does not in fact exist, an objection taken on that ground goes to the root of the whole proceedings, which are, therefore, bad (*c*), unless amended (*d*). The court cannot, however, take judicial notice that the corporation which appears on the record does not exist (*e*).

16 L. J. (Q. B.) 407. As to the change of name by a company, see Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 8; and title COMPANIES, Vol. V.

(*m*) *Colchester Corporation* v. *Seaber* (1766), 3 Burr. 1866, 1873.

(*n*) *Luttrel's Case* (1601), 4 Co. Rep. 86 a, 87 b.

(*o*) *A.-G.* v. *Farnham Town* (1669), Hard. 504.

(*p*) *Colchester Corporation* v. *Seaber*, *supra*.

(*q*) *Scarborough Corporation* v. *Butler* (1685), 3 Lev. 237. Where the name of an existing corporation has been changed by a new charter, and a bond is given by it in its new name, an action on the bond should not be brought against the corporation in its old name even with the new name added as an alternative (*Knight* v. *Wells Corporation* (1694), Lut. 508).

(*r*) *Eton College Case* (1557), Jenk., case 54, p. 214.

(*s*) *Ayray's* (*Dr.*) *Case* (1614), 11 Co. Rep. 18 b, 21 a.

(*a*) *Bristol's* (*Dean and Chapter*) *Case* (1603), Cary, 44; *Croydon Hospital* v. *Farley* (1816), 6 Taunt. 467, where the correct name of a corporation being "The Wardein and Poore of the Hospitall of the Holie Trinitie in Croydon, of the Foundation of John Whitegift, Archbishop of Canterbury," the description of it as the "Wardein and Poore of the Hospitall of the Holie Trinitie in Croydon" in a deed of conveyance of lands by the corporation, was held to be sufficient; *A.-G.* v. *Rye Corporation* (1817), 1 Moore (C. P.), 267, where a devise of lands for the establishment of a school to "the right worshipful the mayor, jurats, and town council of Rye" was held sufficient to pass such lands to the corporation of Rye, the correct description of which was "The mayor, jurats and commonalty of Rye."

(*b*) *York's* (*Abbot*) *Case*, cited 10 Co. Rep. 125 b.

(*c*) *Doe* d. *Malden Corporation* v. *Miller* (1818), 1 B. & Ald. 699.

(*d*) *Stafford Corporation* v. *Bolton* (1797), 1 Bos. & P. 40; and see R. S. C., Ord. 16, rr. 2, 11; Ord. 28, r. 1.

(*e*) *Cooch* v. *Goodman* (1842), 2 Q. B. 580.

SECT. 4.—*The Seal.*

SECT. 4. The Seal.

696. A corporation sole does not require a seal (*f*); but a corporation aggregate can, as a general rule (*g*), only act or express its will by deed under its common seal (*h*); for the seal is the only authentic evidence of what the corporation has done or agreed to do (*i*). The resolution of a meeting, however numerously attended, is not the act of the whole body, but every member knows he is bound by what is done under the corporate seal (*k*).

Seal requisite to bind a corporation aggregate.

697. The power to possess and use a seal is incidental to a corporation (*l*). But a *quasi*-corporation, such as churchwardens and overseers, being only a corporation for certain purposes, have no common seal at common law (*m*).

Power of possessing and using seal.

Non-existence of a seal in the case of a body alleged to be incorporated, although cogent evidence against incorporation, is not conclusive on the question (*n*). On the other hand, the mere fact that an aggregate of persons have and use a common seal is not conclusive, but is evidence to go to the jury on the question of incorporation (*o*).

A corporation may change its seal at pleasure, and even make use of the seal of an individual, so long as the seal which is actually used is applied as the seal of the corporation for the time being (*p*).

698. The mere affixing of the corporate seal is not enough to bind the corporation; there must be delivery of the deed also (*q*). And although, *prima facie*, the affixing of the seal imports delivery, yet, if it be intended otherwise, it is not so (*r*). Delivery, except where made under a power of attorney (*s*), which of course must be

Necessity for delivery.

(*f*) 1 Bl. Com. 475.

(*g*) For the exceptions to the rule, see pp. 380 *et seq.*, *post*.

(*h*) *Church* v. *Imperial Gas Light and Coke Co.* (1838), 6 Ad. & El. 846, *per* Lord DENMAN, C.J., at p. 861.

(*i*) *Ludlow Corporation* v. *Charlton* (1840), 6 M. & W. 815, *per* ROLFE, B., at p. 823. If the officer affixing the seal verifies it with his signature, he is not an attesting witness, and need not be called to prove the execution of the deed in question (*Doe* d. *Bank of England* v. *Chambers* (1836), 4 Ad. & El. 410).

(*k*) *Ludlow Corporation* v. *Charlton*, *supra*.

(*l*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 30 b.

(*m*) *Ex parte Annesley* (1836), 2 Y. & C. (EX.) 350, 353.

(*n*) *R.* v. *Dacres* (*Lord*) (1553), Dyer, 81 a; see also *A.-G.* v. *Chester Corporation* (1849), 1 H. & Tw. 46.

(*o*) *Baxter* v. *Mann* (1838), cited in *Cooch* v. *Goodman* (1842), 2 Q. B. 580, 593; Grant, Law of Corporations, p. 58.

(*p*) *Yarmouth Corporation* v. *Cowper* (1629), Godb. 439; *Cooch* v. *Goodman*, *supra*; 6 Vin. Abr. tit. Corporations, G; and compare *Gray* v. *Lewis* (1869), L. R. 8 Eq. 526. In some cases the use of a seal not bearing the corporation's name engraved on it is subject to penalties (Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 63 (3); Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 66), but not prohibited, so that contracts made under such a seal would seem to bind the corporation.

(*q*) *Derby Canal Co.* v. *Wilmot* (1808), 9 East, 360.

(*r*) As to sealing and delivery generally, see title DEEDS AND OTHER INSTRUMENTS.

(*s*) As to powers of attorney, see title AGENCY, Vol. I., pp. 154 *et seq.*

SECT. 4. The Seal.

made subject to the same rules as are applicable to any other deed, must be made at a duly constituted meeting of the corporation (*t*).

Presumption as to due sealing.

Where the corporate seal is affixed by persons having the legal custody of it, to a deed which it is within the power of the corporation to execute, there is, as a general rule, a presumption that the seal was set with due regard to the fulfilment of all preliminary proceedings required by the constitution (*u*); and, if no special formalities are prescribed by Act of Parliament or the constitution, with sufficient authority (*w*). Still, even where the seal has been fixed by the proper officer, it is open to the corporation to show that the seal was set without the authority of the corporation (*a*), or without the requisite formalities having been gone through (*b*). But a corporation seeking to set aside its own formal act on the ground of irregularity in the proceedings preliminary to the setting of the corporate seal, can only do so on the clearest evidence (*c*).

Where a corporation does nothing from which it might be inferred that it warranted the act of its agent or officer to be genuine, the fraudulent application by him of the corporate seal for his own purposes will not prevent the corporation from disputing the validity of such application in a case where, apart from the particular transaction, it was within the scope of the agent's general authority and duty to apply the seal (*d*).

Trading corporations.

699. In the case of trading corporations, where no particular formalities are prescribed by the constitution as to the mode in

(*t*) *Merchants of the Staple of England (Mayor etc.)* v. *Bank of England (Governor and Company)* (1887), 21 Q. B. D. 160, C. A., *per* WILLS, J., at p. 165, stating the result of an examination of the ancient authorities. This rule, however, does not apply to trading corporations, as to which essentially different principles apply (*Re Barned's Banking Co., Ex parte Contract Corporation* (1867), 3 Ch. App. 105; nor to statutory corporations, such as local government bodies, where the seal is affixed by an officer or officers pursuant to a resolution of the body. Where certain individual corporators by their proper names purported to demise certain lands by deed, but the deed was executed not expressly by them individually but by the affixing of the corporate seal, it was held that it had been executed by the corporation and not by themselves (*Cooch* v. *Goodman* (1842), 2 Q. B. 580). On the other hand, where an unauthorised person, pretending to act on behalf of a corporation, put the corporation seal to a deed, yet it was held to be not, by that act, the deed of the corporation (*Anon.* (1700), 12 Mod. Rep. 423, *per* HOLT, C.J.).

(*u*) *Clarke* v. *Imperial Gas Light Co.* (1832), 1 Nev. & M. (K. B.) 206.

(*w*) *Re Barned's Banking Co., Ex parte Contract Corporation, supra, per* Lord CAIRNS, L.J., at p. 116.

(*a*) *Hill* v. *Manchester and Salford Waterworks Co.* (1833), 2 Nev. & M. (K. B.) 573. The mere fact that the custody of the corporate seal is confided to the clerk to the corporation is not such negligence on the part of the corporation as to disentitle it to recover, in an action against a third party, stock belonging to it, transferred by the clerk under the corporate seal without the authority of the corporation (*Merchants of the Staple of England (Mayor etc.)* v. *Bank of England (Governor and Company), supra.*

(*b*) *D'Arcy* v. *Tamar, Kit Hill, and Callington Rail. Co.* (1867), L. R. 2 Exch. 158. The formalities here referred to are those of which the public are deemed to have notice, not mere private regulations created or destroyed at will by the corporation of its own accord (*Gloucester County Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A.).

(*c*) *Clarke* v. *Imperial Gas Light Co., supra.*

(*d*) *Ruben* v. *Great Fingall Consolidated*, [1906] A. C. 439.

which, or the persons in whose presence, the seal shall be affixed to a document, the persons who, as a matter of practice, manage its affairs, must, of necessity, be able to use the seal for those acts which they are authorised to perform (*e*).

The court will not grant a mandamus directing a company to remove its seal from a document on the allegation that it was affixed without authority and contrary to statute (*f*).

Rights and duties of custodian of seal.

700. Where the custodian of the common seal is called upon to affix it to an instrument, he has a right to satisfy himself that the instrument is a proper one, and for that purpose, except in simple cases, the instrument should be tendered to him before sealing (*g*).

If a corporate officer refuses to apply the corporate seal in accordance with the legitimate direction to do so of a majority of the members, the latter may compel him by *mandamus* to comply with such direction (*h*). Moreover, for this purpose, a mandamus will be granted on the application of a stranger to the corporation who has acquired under the resolution an inchoate right to have the seal applied (*i*).

SECT. 5—*Domicil.*

SUB-SECT. 1.—*English Corporations.*

Domicil necessary.

701. A corporation ought to have a place of foundation—that is, to belong to some definite locality (*k*).

Where a corporation or company is incorporated in England under the laws of England, and has its head office from which the business is directed and managed in England, it is domiciled (*l*) in England (*m*), and it makes no difference that, except for the locality of its office and the management and direction of its business from there, the whole of its property is situated and its business is transacted outside England (*n*). Such a corporation cannot be divided into parts, English and foreign (*o*). But an English corporation which is registered also in a foreign country is thereby made into two corporations, each being a distinct entity (*p*).

(*e*) *Re Barned's Banking Co., Ex parte Contract Corporation* (1867), 3 Ch. App. 105, *per* Lord CAIRNS, L.J., at p. 116.

(*f*) *Ex parte Nash* (1850), 15 Q. B. 92, where the document was a register of shareholders in a railway company.

(*g*) *R.* v. *Kendall* (1841), 1 Q. B. 366. As to the effect of his signature, see note (*i*), p. 309, *ante*.

(*h*) *R.* v. *Windham* (1776), 1 Cowp. 377; *R.* v. *Kendall*, *supra*.

(*i*) *R.* v. *Kendall*, *supra*.

(*k*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 29 b, 32 b; Bac. Abr. tit. Corporations, C, 2; *London Tobacco Pipe Makers' Co.* v. *Woodroffe* (1828), 7 B. & C. 838, 852, where it was held that by fixing the place of meeting for the corporation at London or Westminster, or within three miles thereof, the requisite local limits were sufficiently established.

(*l*) As to domicil generally, see title CONFLICT OF LAWS, Vol. VI., p. 182.

(*m*) *Calcutta Jute Mills Co.* v. *Nicholson* (1876), 1 Ex. D. 437, *per* KELLY, C.B., at p. 444.

(*n*) See *San Paulo (Brazilian) Rail. Co.* v. *Carter*, [1896] A. C. 31.

(*o*) *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428, 450, 451; *Imperial Continental Gas Association* v. *Nicholson* (1877), 37 L. T. 717.

(*p*) *St. Louis Breweries, Ltd.* v. *Apthorpe* (1898), 79 L. T. 551, *per* WILLS, J., at p. 555.

SECT. 5. Domicil.

Holding of shares in foreign corporation.

702. The fact that an English corporation holds all the shares in a foreign corporation does not make the business of the foreign corporation the business of the English corporation. Each corporation is a distinct entity, and the former is neither the trustee nor the agent of the latter (*q*). But it is always a question of fact, and depends upon whether the real directing and controlling power is within this country or not (*r*).

Residence.

703. It is possible, though the point does not appear to have been expressly decided, that a corporation may have more than one residence (*s*). But it dwells at the place where it carries on its general business, and not where it carries on even a considerable part of its business. Hence, the London and North Western Railway Company, for instance, dwells and carries on its general business at Euston, and not at, say, Chester (*a*).

SUB-SECT. 2.—*Foreign Corporations.*

Where resident in England.

704. Where the chief seat of a corporation is in a foreign country, a mere branch or agency being in England, the corporation is not resident or domiciled in England (*b*). But where it conducts its business through its own servant at some place within the jurisdiction of the courts of this country it is said to reside in this country (*c*). The mere fact of its being incorporated and registered, or even having its head office (*d*), in a foreign country does not preclude it from having a residence in this country (*e*).

(*q*) *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1906] 2 K. B. 856, *per* WALTON, J., at p. 872; and see *Kodak, Ltd.* v. *Clark*, [1903] 1 K. B. 505, C. A.

(*r*) *St. Louis Breweries, Ltd.* v. *Apthorpe* (1899), 79 L. T. 551, where the English corporation held, not all, but nearly all, the shares in the foreign company, but the latter was directed and controlled by directors of the former in and from London; and compare *Apthorpe* v. *Peter Schoenhofen Brewing Co., Ltd.* (1899), 80 L. T. 395, C. A.

(*s*) *Goerz & Co.* v. *Bell*, [1904] 2 K. B. 136, *per* CHANNELL, J., at p. 146; and compare *Carron Iron Co.* v. *Maclaren* (1855), 5 H. L. Cas. 416, *per* Lord ST. LEONARDS, at p. 449. The term "residence" is capable of more than one interpretation (*Re Bowie, Ex parte Breull* (1880), 16 Ch. D. 484, C. A., *per* JAMES, L.J., at p. 486); compare *Turnbull* v. *Inland Revenue* (1904), 7 F. (Ct. of Sess.) 1.

(*a*) *Brown* v. *London and North Western Rail. Co.* (1863), 4 B. & S. 326; *Taylor* v. *Crowland Gas and Coke Co.* (1885), 11 Exch. 1; *Rogers* v. *London, Chatham, and Dover Rail. Co.* (1877), 26 W. R. 192; see also *Le Tailleur* v. *South Eastern Rail. Co.* (1877), 3 C. P. D. 18; *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 450.

(*b*) *A.-G.* v. *Alexander* (1874), L. R. 10 Exch. 20, *per* KELLY, C.B., at p. 30 (bank); *Compagnie Générale Transatlantique* v. *Law (Thomas) & Co., La Bourgogne*, [1899] A. C. 431; and see *Erichsen* v. *Last* (1881), 8 Q. B. D. 414, C. A. (telegraph company). As to foreign corporations, see further pp. 393, 395, *post*; and for a full treatment of the law relating to them, see title COMPANIES, Vol. V.

(*c*) *Dunlop Pneumatic Tyre Co., Ltd.* v. *Actien-Gesellschaft für Motor und Motorfahrzeugbau vorm. Cudell & Co.*, [1902] 1 K. B. 342, C. A.; and see note (*s*), *supra*.

(*d*) *New Zealand Shipping Co., Ltd.* v. *Stephens* (1907), 24 T. L. R. 172, C. A.

(*e*) At least for the purposes of the Income Tax Acts (*Goerz & Co.* v. *Bell, supra*; *De Beers Consolidated Mines, Ltd.* v. *Howe*, [1906] A. C. 455).

Part II.—The Creation of Corporations.

SECT. 1.—*In General.*

SECT. 1. In General.

705. A corporation may exist by common law (*f*), by royal charter, by authority of Parliament, by prescription, or by custom (*g*), and not otherwise (*h*). Modes of creation.

706. Five things appear to be essential to the creation of a corporation, namely: (1) Lawful authority of incorporation; (2) the person or persons to be incorporated; (3) a corporate name; (4) a domicil; (5) words sufficient in law, but not restrained to any certain legal and prescript form of words (*i*). Essentials of incorporation.

707. Natural persons and bodies politic may be incorporated (*k*). One corporation may be made out of another corporation (*l*). The same body of persons may constitute at the same time any number of different corporations having different objects (*m*). Two or more corporations may be united so as to form a new corporation, or so that one is absorbed into the other, in each of which cases the new or the continuing body, as the case may be, will succeed to the rights and obligations of the corporations so united or absorbed (*n*). Who may be incorporated.

A corporation may be divided into two or more parts by royal charter or, more usually, by Act of Parliament (*o*).

708. A corporation is not invalid merely because at the moment of its creation it does not in fact exist, so long as it is capable of coming into existence (*p*). Where the corporation consists of a head and members, they may be appointed after the foundation (*q*). Capacity to come into existence.

709. A franchise is not essential to the creation of a corporation but a privilege pertaining to it (*r*). If a number of individuals claim to be a corporation without any right to do so, it is a usurpation of a franchise; and an information against the whole corporation, as a body, to show by what authority they claim to be a corporation can be brought only by and in the name of the Franchise.

(*f*) *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349, *per* LITTLEDALE, J., at p. 383.

(*g*) *Byrd* v. *Wilford* (1596), 2 Cro. Eliz. 464.

(*h*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 29 b.

(*i*) *Ibid.*

(*k*) *Ibid.*

(*l*) *Ibid.*, at p. 31 b; 1 Roll. Abr. (1668), p. 512. Thus, Parliament, which is a corporation aggregate, comprises the King, who is a corporation sole.

(*m*) Grant, Law of Corporations (1850), p. 48.

(*n*) *Ibid.*, at p. 8. Parliament, rather than the Crown, is now usually invoked for this purpose.

(*o*) *Ibid.*, at p. 8.

(*p*) *Sutton's Hospital Case, supra*, at p. 32 a.

(*q*) *Ibid.*, at p. 31 a.

(*r*) *R.* v. *London Corporation* (1691), Skin. 310. A corporation is something besides a franchise, for it is a capacity to hold as a natural body; and though it may cease to be *in actu exercito*, yet it may be *actu signato* (*ibid.*, as reported 12 Mod. Rep., *per* EYRE, J., at p. 18). A franchise or liberty is a royal privilege, a branch of the royal prerogative subsisting in the hands of a subject (2 Bl. Com. 37); see title CONSTITUTIONAL LAW, Vol. VI., pp. 489 *et seq.*

SECT. 1. In General.

Attorney-General. It cannot be filed at the instance of an individual against persons for usurping a franchise of a mere private nature, not connected with public government (*s*).

The question of the validity of the constitution of a corporation cannot be decided on proceedings in *quo warranto* against an officer of the corporation (*t*).

SECT. 2.—*By Common Law.*

Common law corporations.

710. By the common law the Crown is a corporation sole (*a*), so also is a parson (*b*) and a bishop (*c*).

Parliament is a corporation aggregate by the common law, consisting of the Crown (the head), the Lords Spiritual and Temporal, and the Commons (*d*).

SECT. 3.—*By Charter.*

SUB-SECT. 1.—*Grant and Acceptances of Charters.*

Right of Crown.

711. Formerly the Pope (*e*), as well as the Crown, could create corporations by grant, and such corporations were called spiritual corporations of persons dead in law, as, for instance, an abbot and convent (*f*); but now only the Crown can create a corporation by grant, and no other person can prescribe to do it (*g*).

But, although a subject cannot create a corporation, yet the Crown may delegate to a private person the right of declaring of what members a corporation shall consist, what shall be their qualification, and in what manner the corporation shall be kept up (*h*). Whether this is done by the Crown at the time of the actual creation of the corporation, or is the subject of a subsequent separate declaration, it is equally the act of the Crown (*i*). A subject so

(*s*) *R.* v. *Ogden* (1829), 10 B. & C. 230.

(*t*) *R.* v. *Taylor* (1840), 11 Ad. & El. 949 ; and see p. 333, *post.*

(*a*) Co. Litt. 15 b, note 4.

(*b*) 1 Bl. Com. 469, 472; *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349, at p. 383.

(*c*) *Ibid.* For other examples of a corporation sole, see p. 305, *ante;* see also title ECCLESIASTICAL LAW.

(*d*) Cowell's Interpreter (1672); and see title PARLIAMENT.

(*e*) See Y. B. 14 Hen. 8, fol. 3.

(*f*) Cowell's Interpreter (1672).

(*g*) *R.* v. *Dacres* (*Lord*) (1553), Jenk., case 35, p. 205 ; *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 33 b. The King may create a corporation within the county palatine of Lancaster (as distinguished from the duchy) under the duchy seal as well as under the Great Seal of England, because as Duke of Lancaster he has *jura regalia* (*per* TREBY, C.J. (Lut. 1237), cited by BULLER, J., in *R.* v. *Amery* (1787), 1 Term Rep. 575, 586. The master of Pembroke College, Oxford, is one of the few instances of the creation of a corporation sole by royal letters patent (2 Bl. Com. 431). The letters patent were afterwards confirmed by stat. 12 Ann. stat. 2, c. 6 (1713), s. 7, (*ibid.*). A prebend may have its origin by charter or prescription (*Mirehouse* v. *Rennell* (1833), 1 Cl. & Fin. 527, 538, H. L.). Prescription presumes the sometime existence of a charter which has been lost; see p. 321, *post.*

(*h*) 1 Bl. Com. 474 ; Bro. Abr. tit. Prerog. 53. Thus, the Chancellor of the University of Oxford has power by charter to create corporations (1 Bl. Com. 474).

(*i*) *R.* v. *Dulwich College* (1851), 17 Q. B. 600, *per* PATTESON, J., at p. 625.

empowered must act strictly in accordance with the royal grant, otherwise the body so constituted will not be a corporation in reality, but only in reputation (*a*).

When incorporation implied.

712. No particular words are necessary in the creation of a corporation; any expression showing an intention to incorporate will be sufficient (*b*).

The fact that corporators are empowered to take and hold land by succession as distinguished from inheritance is evidence that they take as a corporation, and not as individuals (*c*). Thus, when the Crown grants land to certain persons and their successors, it is implied from the word "successors" in this connection that the Crown intended them to take as a corporation (*d*).

Limitations on right of Crown.

713. At common law, the Crown could not create a corporation for a definite period (*e*); but by statute it is now lawful for the Crown in any charter of incorporation to limit the duration thereof to any term or number of years, or for any other period whatsoever (*e*), and by charter or by warrant or other writing under the sign manual from time to time to extend or renew conditionally or unconditionally any term or number of years or other period for which any charter of incorporation granted by the Crown or any privileges of such charter may for the time being be limited to endure (*f*).

In granting a charter to a corporation, the Crown cannot limit

(*a*) *Landewibrevye College Case* (1568), Jenk., case 7, p. 233. Under statutory authority (39 Eliz. c. 5; 21 Jac. 1, c. 1) a corporation may found a hospital (*A.-G.* v. *Newcastle Corporation* (1842), 5 Beav. 307; and (1845), 12 Cl. & Fin. 402, H. L.); and it has been held that even without statutory power it may make a fraternity (*Cudden* v. *Eastwick* (1703), 1 Salk. 192; but see *contra*, *R.* v. *The Coopers Co.*, *Newcastle* (1798), 7 Term Rep. 543, *per* Lord KENYON, C.J., at p. 548), except in the case of the City of London (*Robinson* v. *Groscot* (1696), Comb. 372). A fraternity is a mere voluntary association of persons together for a common purpose of a private nature (*Cudden* v. *Eastwick*, *supra*). The legal meaning of the word "hospital" is a corporate foundation in which all the inmates of the foundation are incorporated, endowed for the perpetual distribution of the founder's charity in the lodging and maintenance of a certain number of poor persons, according to the regulations of the founder. It has no necessary connection with, or reference to, either medicine, surgery, sickness, or accident (Grant, Law of Corporations, p. 567)).

(*b*) Formerly the inhabitants of a town were incorporated if the King granted them a guild. Thus, the King gave a licence to Ramsey to grant rent to one Capellano, and this constituted incorporation. If the Crown grants to the men of Islington a discharge from a certain toll, this is, to that extent, a good incorporation; but, if the Crown grants land to the inhabitants of Islington and their successors and they are not already incorporated, the grant is void, for the Crown is deceived (1 Roll. Abr. (1668), p. 513). Where the King granted land by charter to the men of a certain place without saying to them, their heirs and successors, but reserving a rent, it was held to be a good perpetual corporation for the particular purpose but no further; and upon the release of the rent by the Crown, would be thereupon dissolved ((1554), 1 Dyer, 100 a, pl. 70). But if there had been no reservation of rent there would have been no incorporation (1 Roll. Abr., p. 513).

(*c*) *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349, 376; *Bower* v. *Griffith* (1868), 16 W. R. 540.

(*d*) *River Tone Conservators* v. *Ash*, *supra*, *per* LITTLEDALE, J., at p. 386.

(*e*) Chartered Companies Act, 1837 (7 Will. 4 & 1 Vict. c. 73), s. 29.

(*f*) Chartered Companies Act, 1884 (47 & 48 Vict. c. 56), s. 1.

SECT. 3. By Charter.

or fetter the exercise of the prerogative which is vested in it for the public good, or dispense with anything in which the subject has an interest, or make a grant in violation of the common law (*g*). Thus, the Crown cannot grant a monopoly by charter (*h*). But the Crown may be empowered by statute to grant charters which it could not otherwise grant (*i*).

There cannot be two corporations for the same purpose, at the same time, in the same place; any charter purporting to create a second corporation under such circumstances will be void *ab initio* (*k*). But, apparently, the Crown may make out of an existing corporation a new corporation for another purpose (*l*).

Acceptance of charter.

714. A charter of incorporation is of no effect until it is accepted by those to whom it is granted (*m*). In the absence of any authoritative method of acceptance being stated, acceptance is a question of fact to be determined by the evidence in each particular case (*n*). As a general rule the acceptance of a charter, whether original or otherwise, is proved by evidence of acts done under it (*o*).

Where the majority of the grantees of a charter accepts it, the refusal of the minority to accept will be of no avail against the will of the majority (*p*).

Acceptance by members of a class.

715. A charter granted to certain persons by name and all others of a certain class, does not instantly incorporate the named persons and all the members of the class, but only such of them as assent to the charter (*q*). Although a charter of incorporation granted by the Crown affecting a certain class of persons, as, for instance, persons engaged in a particular trade, cannot be binding on every person belonging to that class in the kingdom, yet it may be binding on all those who accept it and become members of the body so constituted (*r*); and where a charter of incorporation is addressed

(*g*) *Eastern Archipelago Co.* v. *R.* (1853), 2 E. & B. 856, Ex. Ch., *per* PLATT, B., at p. 884; *Lowe's Case* (1609), 9 Co. Rep. 123.

(*h*) *Nightingale* v. *Bridges* (1690), 1 Show. 135; 5 Bac. Abr. tit. Monopoly, A; 3 Co. Inst. 182, 183; Com. Dig. tit. Trade, D, 4. As to Crown grants, see title CONSTITUTIONAL LAW, Vol. VI., pp. 485 *et seq.*

(*i*) *Elve* v. *Boughton*, [1891] 1 Ch. 501, C. A., *per* LINDLEY, L.J., at p. 507. The corporation in question was the London Assurance Corporation, created by charter in pursuance of stat. 6 Geo. 1, c. 18 (1719). Compare Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 210, which governs the grant of a charter to a municipal corporation.

(*k*) *R.* v. *Amery* (1790), 2 Bro. Parl. Cas. 336.

(*l*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 31 b.

(*m*) *R.* v. *Hughes* (1828), 7 B. & C. 708, *per* Lord TENTERDEN, C.J., at p. 718; *Rutter* v. *Chapman* (1841), 8 M. & W. 1, Ex. Ch., *per* Lord DENMAN, C.J., at p. 117.

(*n*) *R.* v. *Hughes*, *supra*, where a new charter was granted to a borough in which there existed a few members of a former corporation which had ceased, owing to reduction of members, and a majority of the persons having a right to signify their assent to the new charter did so either by votes at a public meeting, or, owing to necessity, by written declaration of assent done in private.

(*o*) *Ibid.*, *per* Lord TENTERDEN, C.J., at p. 718.

(*p*) *R.* v. *Pasmore* (1789), 3 Term Rep. 199, *per* Lord KENYON, C.J., at p. 242; and compare *Hamond* v. *Jethro* (1611), 2 Brownl. 97, 100.

(*q*) *Askew's* (*Dr.*) *Case* (1768), 4 Burr. 2186, 2199.

(*r*) *London Tobacco Pipe Makers' Co.* v. *Woodroffe* (1828) 7 B. & C. 838.

to a class of persons indefinite in number, it is not necessary, in order to prove acceptance of the charter, to show that it has been accepted by a majority of the persons belonging to that class (*s*).

Part acceptance.

716. A charter cannot be accepted in part and rejected in part (*t*); it must be accepted as a whole or not at all (*a*), unless, indeed, there is an intention on the part of the Crown that the body to whom the charter is given should have liberty and power to accept it in part and reject it in part (*b*). A charter cannot be accepted for a period of time (*c*); once accepted, it is conclusive for ever, and cannot be impeached by the corporation (*d*).

SUB-SECT. 2.—*Interpretation of Charters.*

Rules of construction.

717. In the interpretation of royal charters it is a rule of construction that a grant made by the Crown at the suit of a subject shall be taken most beneficially for the Crown and against the subject; in other words, that the subject has no right to claim under a grant or charter anything which the Crown has not granted by express, clear, and unambiguous terms (*e*). Nor can a negative be implied from a positive clause in a charter except where no other construction is possible (*f*). Where nothing would pass by a construction against the grantee, a charter is construed liberally in his favour, because it is not consistent with the honour of the Crown to suppose a grant with the intention of passing nothing (*g*).

(*s*) *R.* v. *Amery* (1787), 1 Term Rep. 575, *per* BULLER, J., at p. 587, reversed without reference to this point (1790), 2 Bro. Parl. Cas. 336.

(*t*) *R.* v. *Westwood* (1830), 4 Bli. (N. S.) 213, H. L.

(*a*) *R.* v. *Amery, supra, per* BULLER, J., at p. 589. The grant of a charter by the Crown to a corporation is not like a grant from one subject to another, a matter of bargain, but a matter of favour, and will be construed accordingly. Thus, where a corporation accepted a charter whereby the Crown granted a borough in fee farm and other privileges, and the charter expressed the will of the Crown that the corporation should repair certain banks, mounds, sea shores and piers, it was held, at the suit of a private person damaged by neglect of such repair, that the corporation were bound to do such repairs (*Lyme Regis Corporation* v. *Henley* (1834), 1 Bing. (N. C.), 222, H. L., *per* PARK, J., at p 236).

(*b*) *R.* v. *Westwood, supra.*

(*c*) *R.* v. *Amery, supra, per* BULLER, J., at p. 587.

(*d*) *Ibid.*

(*e*) *Eastern Archipelago Co.* v. *R.* (1853), 2 E. & B. 856, Ex. Ch., *per* POLLOCK, C.B., at pp. 906, 907. As to the construction of charters, generally, see title DEEDS AND OTHER INSTRUMENTS.

(*f*) *Ibid.* In this case POLLOCK, C.B., was of opinion that the rule here stated had the effect of excluding the application of the maxims *Expressum facit cessare tacitum* and *Expressio unius est exclusio alterius.* Where, by charter, the Crown granted to a corporation "all fines for trespasses and other offences whatsoever, and also fines for licence to agree, and all amercements, ransoms and forfeited issues, forfeitures year day waste and estrepement" and, by a subsequent charter, the Crown granted to the same corporation "all issues, fines and amercements from whatsoever pledges and mainpernors" of persons dwelling in the borough, the corporation was not, on the construction of the charters, entitled as against the Crown to take a forfeited recognisance or bail bond entered into for the appearance of a prisoner at the next court of assize for the county (*Re Nottingham Corporation,* [1897] 2 Q. B. 502).

(*g*) *Eastern Archipelago Co.* v. *R., supra, per* JERVIS, C.J., at p. 914.

SECT. 3. By Charter.

Words of permission may be interpreted as imperative if they confer a power to be exercised for the public benefit (*h*).

Where words in a charter are apparently in restraint of trade, the courts will construe them as much as possible in favour of the freedom of commerce (*i*).

Evidence of usage.

Although of no avail against the express words of a charter (*k*), evidence of ancient usage will be admissible to control the true construction of it where it is doubtful or obscure (*l*). Similarly, evidence of long usage may be admitted to explain an ambiguous charter (*m*), and such evidence will be treated by the courts as of great weight (*n*). But no usage can control a charter of modern date (*a*).

Again, the construction to be put upon an ambiguous word in a charter may be materially influenced by the sense in which it is used in earlier charters (*b*).

SUB-SECT. 3.—*New Charters.*

New charters.

718. A corporation created by charter may apply to the Crown for a new charter (*c*); and the new charter will be valid, even if it alters the terms of the original charter, unless the latter has been confirmed by statute (*d*). It is necessary for the corporation to accept the new charter (*e*); for the alteration must be made with the consent of all the parties who are competent to consent to it (*f*). The acceptance must be made by a majority of the existing corporation (*g*). But if the old corporation be partially dissolved by

(*h*) *R.* v. *Hastings Corporation* (1822), 1 Dow. & Ry. (K. B.) 148.

(*i*) *Berwick-upon-Tweed Corporation* v. *Johnson* (1773), Lofft, 334, where the charter had been confirmed by Act of Parliament.

(*k*) *R.* v. *Salway* (1829), 9 B. & C. 424, *per* Lord TENTERDEN, C.J., at p. 435.

(*l*) *Blankley* v. *Winstanley* (1789), 3 Term Rep. 279; *R.* v. *Osbourne* (1803), 4 East, 327; *Tewkesbury Corporation* v. *Bricknell* (1809), 2 Taunt. 120. Usage is "a collection through a great period of time of the regulations by which" a community "has from time to time agreed to put a construction upon the instrument" of their constitution (*A.-G.* v. *Newcombe* (1807), 14 Ves. 1, *per* Lord ELDON, at p. 8).

(*m*) *Newcastle-upon-Tyne Pilots* v. *Bradley* (1852), 2 E. & B., at p. 428, n. (a), where in 1851 a charter of 1687 was treated as an ancient charter.

(*n*) *R.* v. *Varlo* (1775), 1 Cowp. 248, 250.

(*a*) *R.* v. *Grosvenor* (*Sir R.*) (1733), 7 Mod. Rep. 198, where the charter in question was granted in 1664. The words "ancient usage and custom" need not necessarily import immemorial usage or custom; but, as a general rule, such words mean usage and custom of such considerable antiquity, that the time during which it has prevailed may be evidence of its being reasonable (*R.* v. *York* (*Sheriffs*) (1832), 3 B. & Ad. 770, *per* Lord TENTERDEN, C.J., at p. 777). As to customs, generally, see titles CUSTOM AND USAGES.

(*b*) *R.* v. *Grout* (1830), 1 B. & Ad. 104, *per* BAYLEY, J., at p. 111.

(*c*) *Ware* v. *Grand Junction Water Works Co.* (1831), 2 Russ. & M. 470, *per* Lord BROUGHAM, L.C., at p. 484.

(*d*) *R.* v. *Miller* (1795), 6 Term Rep. 268, 277. For an instance of a statutory confirmation of a charter, see stat. 14 & 15 Hen. 8, c. 5 (1523).

(*e*) *R.* v. *Pasmore* (1789), 3 Term Rep. 199; *R.* v. *Cambridge* (*Vice-Chancellor*) (1765), 3 Burr. 1647, *per* Lord MANSFIELD, C.J., at p. 1657; *R.* v. *Osbourne*, *supra*.

(*f*) *R.* v. *Pasmore*, *supra*, at p. 242.

(*g*) See the cases cited in note (*e*), *supra*. But it has been doubted whether the acceptance of a new charter ought not to be only with the consent of every member (*Ward* v. *Society of Attornies* (1844), 1 Coll. 370, 379); see p. 398, *post*.

loss of members, a majority of the existing members will be sufficient to effect acceptance (*h*).

It is not necessary for a corporation already existing (*i*) to accept a new charter as a whole; it may accept the charter in part only, and may continue to act in part under its old charter or prescription (*k*).

If an old charter be surrendered, but the surrender is not enrolled in Chancery, a new charter granted in consideration of the old is void (*l*), and a charter granted in consideration of the surrender of a void charter is itself void (*a*).

Effect of new charter.

719. When a corporation takes a new charter concerning liberties, it may be used as a grant or confirmation (*b*); and a charter may be none the less confirmatory though it is expressed in terms more appropriate to the creation of a new corporation than the confirmation or revival of an old one (*c*).

The fact that a corporation takes a new grant from the Crown of a new name will not destroy rights already existing (*d*), and though the new charter should grant new rights, the former rights, privileges, or franchises of the corporation will not be thereby destroyed, but the corporation may use and enjoy them, as it did before (*e*), and similarly its ancient powers and privileges will not

(*h*) *R.* v. *Pasmore* (1789), 3 Term Rep. 199.

(*i*) For the necessity of acceptance in full by a newly-created corporation, see p. 317, *ante*.

(*k*) *R.* v. *Cambridge* (*Vice-Chancellor*) (1765), 3 Burr. 1647, *per* Lord MANSFIELD, C.J., at pp. 1656, 1661, and *per* YATES, J., at p. 1663; but see *contra*, *R.* v. *Routledge* (1780), 2 Doug. (K. B.) 531, *per* BULLER, J., at p. 535.

(*l*) *Butler* v. *Palmer* (1699), 1 Salk. 191; *Piper* v. *Dennis* (1698), 12 Mod. Rep. 253; *R.* v. *Osbourne* (1803), 4 East, 327. It is not the practice to enrol surrenders now.

(*a*) *Piper* v. *Dennis*, *supra*. Where the Crown, by charter, without reciting or confirming a supposed former charter which was void, merely referred to it by releasing to the corporation certain powers of amotion reserved by the void charter to the Crown, and also released the corporation from all liability concerning any acts done in violation of or in opposition to the said void charter, the subsequent charter was held to be good, and not to have been granted in consideration of the void charter (*R.* v. *Haythorne* (1826), 5 B. & C. 410).

(*b*) *R.* v. *Larwood* (1694), 1 Ld. Raym. 29, 32.

(*c*) *R.* v. *Stratford-upon-Avon Corporation* (1811), 14 East, 348. The words "*concessimus*" or "*damus et concedimus*" may signify confirmation of an existing corporation as well as the creation of a new one (*Hall* v. *Greene* (1590), cited Sav. 133). Where a charter of restoration granted to a corporation that it should enjoy all franchises, elections, and rights of election that it had previously enjoyed "by virtue or pretence of any charter or by any other lawful manner," right or title, it was held that a usage which, being inconsistent with a former charter, was an unlawful usage was not recognised or confirmed by the charter of restoration (*R.* v. *Salway* (1829), 9 B. & C. 424, 436, where the word "pretence" in the charter of restoration was interpreted to exclude "scrupulous, nice and subtle" inquiry upon doubtful points, not to give validity to matters contrary to clear and unambiguous ordinances). The proclamation of James II. for restoring corporations to their ancient charters, liberties, rights, and franchises dated October 7, 1688 (although in form a proclamation, operated as a grant or charter of restoration to those who accepted (*Newling* v. *Francis* (1789), 3 Term Rep. 189). As to charters granted during the reign of James II., see *A.-G.* v. *Gore* (*Lord*) (1740), Barn. (CH.) 145, 149.

(*d*) *Weld* v. *Wiggett* (1674), Freem. (K. B.) 320; *R.* v. *Cambridge* (*Vice-Chancellor*), *supra*, *per* Lord MANSFIELD, C.J., at p. 1661.

(*e*) *Colchester Corporation* v. *Seaber* (1766), 3 Burr. 1866, 1874.

SECT. 3. By Charter.

be thereby abrogated, merged or extinguished except by the express words of the new charter (*f*).

Where a later charter is inconsistent with a former charter or ancient usage, both cannot stand, and the later charter must prevail; but if it is not inconsistent it will not necessarily abrogate the ancient constitution, and the latter will stand, either totally or partially, as the case may be (*g*).

SECT. 4.—*By Statute.*

Intention to incorporate sufficient.

720. A corporation may be created by the authority of Parliament (*h*) expressed either in a special statute creating a particular corporation or corporations (*i*), or in a general statute, under which any number of corporations may be created on complying with its terms (*k*). To constitute creation, however, it is not necessary that any particular form of words should be used in the statute; it is sufficient if the intent to incorporate be evident (*l*). Where by statute a body of persons are empowered to sue and be sued by a special name, it is strong evidence that they constitute a corporation (*m*).

A charter in which the Crown is expressed to grant with the assent of the Lords and Commons in Parliament assembled, has the effect of a statute (*n*).

(*f*) *Haddock's Case* (1681), T. Raym. 435, 439; *R.* v. *Cambridge* (*Vice-Chancellor*) (1765), 3 Burr. 1647, *per* Lord MANSFIELD, C.J., at p. 1661. Thus, where a corporation by prescription accepts a charter expressly limiting the corporators to a number less than had previously existed by the custom, it is bound by the restriction placed upon its numbers by the new charter (*Page* v. *R.* (1792), 2 Ridg. Parl. Rep. 445, 502).

(*g*) *R. v. Abell* (1823), 3 Dow. & Ry. (K. B.) 390. So, where prior to the granting of a new charter, the chief officer of the corporation had been appointed to execute his office for a year "and until another shall be chosen," and the new charter, after confirming all their rights and privileges, abolished the former manner of electing, nominating and appointing such officer, and appointed his election to be in a different manner and upon a different day "for one whole year then next following," it was held, by a majority of the court, that the old power of holding over "until another shall be chosen" had been taken away by the new charter (*R.* v. *Phillips* (1720), 1 Stra. 394).

(*h*) *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349, *per* LITTLEDALE, J., at p. 383; and see the titles referred to on pp. 300, 301, *ante*.

(*i*) As, for instance, Local Government Act, 1888 (51 & 52 Vict. c. 41) (county councils).

(*k*) As, for instance, Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69) (limited companies); Local Government Act, 1894 (56 & 57 Vict. c. 73) (rural district and parish councils). As to the extension by statute of the power of the Crown to grant charters, see p. 315, *ante*.

(*l*) *River Tone Conservators* v. *Ash*, *supra*, *per* LITTLEDALE, J., at p. 384. Where a number of persons are so constituted by Act of Parliament that they have perpetual succession, are to continue for all time, may take land, make contracts which shall be binding, not upon themselves, but upon the persons filling office, and are authorised to sue or be sued in the name of their treasurer, they are in the nature of a corporation aggregate at least for the purposes of the Act (*Jefferys* v. *Gurr* (1831), 2 B. & Ad. 833). It has been held that trustees appointed by an Act of Parliament for dividing and inclosing a common are, by implication, a corporation (*Ex parte Newport Marsh Trustees* (1848), 16 Sim. 346).

(*m*) *River Tone Conservators* v. *Ash*, *supra*.

(*n*) *Re Islington Market Bill* (1835), 3 Cl. & Fin. 513, H. L. But where, in reply

SECT. 4. By Statute.

Constitution contained in statute alone.

721. When a body of persons apply to the legislature for an Act of incorporation, what they ask for of the legislature is not an Act incorporating and giving powers to those only who are applying, —not necessarily even incorporating and giving powers to any of them—but an Act incorporating all persons who may be willing, on certain terms, to become members of the corporation. If the legislature accedes to such an application, the Act when passed becomes the charter of the corporation, prescribing its duties and declaring its rights, and all persons becoming members have a right to consider that they are entitled to all the benefits held out to them by the Act, and are liable to no obligations beyond those which are there indicated (*a*).

Moreover, the constitution of a corporation created by the authority of Parliament, or by royal charter having the effect of an Act of Parliament, can only be revoked by an Act of Parliament (*b*). Where the constitution of a corporation is determined by an Act of Parliament, it cannot be altered afterwards by royal charter (*c*). A trading corporation incorporated by Act of Parliament has an incidental power to apply to Parliament for authority to extend or vary the powers which it already possesses (*d*).

SECT. 5.—*By Prescription.*

Prescription of lost charter.

722. A corporation, whether aggregate (*e*) or sole (*f*), may be such by prescription (*g*), a lost grant or charter from the Crown being presumed (*h*).

The fact that a charter is couched in terms appropriate to the

to a petition of the House of Commons, the King agrees to ratify a charter of incorporation under the Great Seal, and this is shortly afterwards done by charter, this is not equivalent to confirmation by Act of Parliament, and the Crown may thereafter vary the constitution of the corporation without the concurrence of Parliament (*R.* v. *Haythorne* (1826), 5 B. & C. 410). A charter granted "in Parliament" or with the consent of the Lords Spiritual and Temporal is not equivalent to a charter confirmed or authorised by Act of Parliament (*R.* v. *Attwood* (1833), 1 Nev. & M. (K. B.) 286, 302).

(*a*) *Caledonian and Dumbartonshire Rail. Co.* v. *Helensburgh Magistrates* (1856), 2 Macq. 391, 405, H. L., quoted with approval in *Mann* v. *Edinburgh Northern Tramways Co.*, [1893] A. C., 69, *per* Lord HERSCHELL, L.C., at pp. 79, 80.

(*b*) *Re Islington Market Bill* (1835), 3 Cl. & Fin. 513, H. L.; and see p. 398, *post*.

(*c*) *R.* v. *Miller* (1795), 6 Term Rep. 268, 277.

(*d*) *Ware* v. *Grand Junction Water Works Co.* (1831), 2 Russ. & M. 470.

(*e*) *R.* v. *Ilchester Corporation* (1824), 2 B. & C. 764.

(*f*) *King* v. *Baylay* (1831), 1 B. & Ad. 761; and see *Mirehouse* v. *Rennell* (1833), 1 Cl. & Fin. 527, 538, H. L.

(*g*) Prescription is evidence of what was in the charter but does not now appear (*Anon.* (1774), Lofft, 556, *per* Lord MANSFIELD, at p. 558). As to what amounts to evidence of prescription, see *Jenkins* v. *Harvey* (1836), 1 Gale, 454, *per* PARKE, B., at p. 457.

(*h*) *Re Faversham Free Fishermen* (*Company or Fraternity*) (1887), 36 Ch. D. 329, C. A., where a company or fraternity of free fishermen which had existed from time immemorial and had from time immemorial exercised the right of free fishery within a certain manor, and whose members had always been admitted tenants of the manor, was held to be a prescriptive corporation and to hold its property upon condition or trust for its members. The corporation had been recognised as such by an Act of Parliament. Owing to the nature of the property of this corporation a winding-up order was refused as useless.

SECT. 5. By Prescription.

creation of an entirely new corporation is not conclusive against the corporation being a corporation by prescription, and parol evidence is admissible to support the contention that the charter operates to confirm or revive a pre-existing corporation (*i*).

Part. III.—The Members.

SECT. 1.—*In General.*

Membership.

723. No special limits are placed upon the number of members composing a corporation aggregate, provided that the number is definite or capable of being ascertained (*k*). There must, however, be at least two members (*l*), and the minimum number is in some cases increased by statute (*m*). The maximum number of members may, however, be restricted by the constitution (*n*), and a corporation cannot plead ignorance of such constitution (*o*).

All persons, including aliens (*p*), married women (*q*), infants (*r*), and corporations (*s*), may become members of a corporation, except when its constitution otherwise provides (*t*), or where its nature necessarily excludes them (*a*).

SECT. 2.—*Qualification.*

Qualification of members.

724. A corporation has as an incident belonging to it a right to make any persons it likes members, unless it is clearly deprived of that right by prescription or express words in its charter (*b*). But

(*i*) *R.* v. *Stratford-on-Avon Corporation* (1811), 14 East, 348.

(*k*) Grant, Law of Corporations (1850), p. 48.

(*l*) *Ibid.*; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 2, fixing the minimum number for a private company at two.

(*m*) As, for instance, to seven (Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 2); to five (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 3 (1)).

(*n*) *Page* v. *R.* (1792), 2 Ridg. Parl. Rep. 445, 502. Thus, the number of members of a parish council must not exceed fifteen (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 3 (1)).

(*o*) Grant, Law of Corporations (1850), p. 23.

(*p*) Co. Litt. 129 b; *Reuss* (*Princess*) v. *Bos* (1871), L. R. 5 H. L. 176, 193.

(*q*) *Re Leeds Banking Co., Matthewman's Case* (1866), L. R. 3 Eq. 781.

(*r*) *Re China Steamship and Labuan Coal Co., Capper's Case* (1868), 3 Ch. App. 458; *Re Hercules Insurance Co., Pugh and Sharman's Case* (1872), L. R. 13 Eq. 566; *Nottingham Permanent Benefit Building Society* v. *Thurstan*, [1903] A. C. 6.

(*s*) See *Ford* v. *Harington* (1869), L. R. 5 C. P. 282. The King in his corporate capacity is a member of the corporation of Parliament. Corporations and companies often become corporators of other corporations or companies by acquiring and holding shares therein where that can be done; see *Re Barned's Banking Co., Ex parte Contract Corporation* (1867), 3 Ch. App. 105, *per* Lord CAIRNS, L.J., at p. 113: "There is apparently no reason at common law why one corporate body should not become a member of another corporate body." But see p. 364, *post*.

(*t*) For an instance, see Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 12 (clergymen and ministers of religion).

(*u*) *Beresford-Hope* v. *Sandhurst* (*Lady*) (1889), 23 Q. B. D. 79, C. A.; *De Souza* v. *Cobden*, [1891] 1 Q. B. 687, C. A.

(*b*) *Anon.* (1728), 1 Barn. (K. B.) 137; *R.* v. *West Love Corporation* (1825), 3 B. & C. 677, *per* ABBOTT, C.J., at p. 685.

no one can be made a member of a corporation without his consent (*c*). The executors or administrators of a deceased corporator are not members of the corporation (*d*).

An inchoate right to become a member of a corporation may arise in various ways, as by birth, service, or marriage (*e*). But a person having the required qualifications does not necessarily possess an absolute right to be a member of a corporation (*f*). By custom the application of a fully qualified person for membership may be rejected, by ballot or otherwise, by the whole or a portion only of the corporation, without any reason being assigned (*g*).

Where a person has a right to be admitted a member of a corporation, his admittance will not be bad because of a defect in the title of the officer presiding at the corporate meeting at which he was formally admitted (*h*).

SECT. 3.—*Rights as against the Corporation.*

Inspection of books.

725. The books of a corporation are, as a general rule, open to the inspection of the corporators only (*i*), for corporate purposes (*k*). But neither individual members nor a number of members of a corporation are entitled to demand a general inspection of the muniments, deeds, books and documents belonging to the corporation as a whole, unless it can be shown that such inspection is required in connection with some definite and particular matter in dispute or controversy between the members themselves or between the corporation on the one hand and individual members on the other. The court will not order an inspection on general charges

(*c*) *Askew's* (*Dr.*) *Case* (1768), 4 Burr. 2186, 2200.

(*d*) *Allen* v. *Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 656, C. A., *per* LINDLEY, M.R., at p. 670.

(*e*) *R.* v. *West Looe Corporation* (1825), 3 B. & C. 677, *per* ABBOTT, C.J., at p. 684.

(*f*) *R.* v. *Eye Corporation* (1821), 4 B. & Ald. 271, where in a bye-law there was a direction that once in every quarter of a year the proper officer of the corporation should admit to membership such persons as should apply for admission and be possessed of the requisite qualifications.

(*g*) *R.* v. *Dublin Corporation* (1826), Batt. 628.

(*h*) *R.* v. *Slythe* (1827), 6 B. & C. 240, 246. Where the custom was that "every freeman's son born in the town after his father was a freeman, should be admitted a freeman on attaining his age of twenty-one years," and there was no evidence since the time of Queen Elizabeth that more than one son of a freeman had been admitted under the custom, it was held that the custom was satisfied by one son only being admitted, because, as interpreted by the usage, the true construction of the custom was not that "every son of a freeman," but that "a son of every freeman" should be admitted (*R.* v. *Rye Corporation* (1828), 7 L. J. (o. s.) (K. B.) 107).

Where in order to qualify for membership of a corporation it is necessary that the applicant should have served a seven years' apprenticeship to a freeman residing within the borough, an apprenticeship served outside the borough to a freeman occasionally resident within the borough will not be sufficient (*R.* v. *Marshal* (1787), 2 Term Rep. 2).

(*i*) In proper cases the right of inspection may be exercised by an accountant appointed by the persons entitled to inspect (*Norey* v. *Keep*, [1909] 1 Ch. 561).

(*k*) *Finch* v. *Ely* (*Bishop*) (1828), 2 Man. & Ry. (K. B.) 127, *per* Lord TENTERDEN, C.J., at p. 129; *Stevens* v. *Berwick-on-Tweed Corporation* (1835), 4 Dowl. 277; *R.* v. *Southwold Corporation, Ex parte Wrightson* (1907), 97 L. T. 431; *R.* v. *Bradford-on-Avon Rural District Council, Ex parte Thornton* (1908), 99 L. T. 89.

SECT. 3. Rights as against the Corporation.

or merely for the purpose of discovering whether charges can be made (*l*). Where a person at the time of action brought has no right to inspect the books of the corporation, he will not gain the right for the purposes of the action by subsequently becoming a corporator (*m*).

Poll-books belonging to a corporation which contain the names of the electors of the mayor are public books of the corporation and therefore open to inspection (*n*).

Enforcement of right.

A private right in a member to peruse and take copies of a book of a corporation may be enforced by injunction restraining the corporation from continuing to refuse to comply with such right, or by an action of mandamus or for a mandatory injunction directed to the corporation to comply with such right. In such a case the court has no jurisdiction to inquire into the motives of the applicant, and therefore a prerogative writ of mandamus is not the appropriate remedy (*o*).

SECT. 4.—*Disfranchisement.*

Definition.

726. Disfranchisement is the expulsion of a corporator from membership, and involves the total deprivation of all privileges, rights, interests, profits and advantages which the individual member enjoyed whilst a corporator (*p*). The power to disfranchise is incident to a corporation at large (*q*), but not to a select body within the corporation, even though the latter may have a right to elect (*r*), unless by virtue of the charter or by prescription such a power is expressly and clearly given (*s*).

Right of members to be heard.

727. A corporator, having a freehold in his franchise, cannot be removed or disfranchised without having been reasonably warned and heard in answer to the charge made against him (*t*), and the charge must be more than of general disobedience to regulations: particular breaches must be specified (*a*). But, if the constitution allows, the corporation may disfranchise whom it pleases, and the person so expelled has no remedy (*b*).

(*l*) *R.* v. *Merchant Tailors' Co.* (1831), 2 B. & Ad. 115; *Bank of Bombay* v. *Suliman Somji* (1908), L. R. 35 Ind. App. 130.

(*m*) *Bristol Corporation* v. *Visger* (1826), 8 Dow. & Ry. (K. B.) 434.

(*n*) *R.* v. *Hughes* (1727), 1 Barn. (K. B.) 41; as to inspection of the books of a corporation generally, see title DISCOVERY.

(*o*) *Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 708, C. A., where the right in question was given by the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 10; compare *Norey* v. *Keep*, [1909] 1 Ch. 561.

(*p*) Grant, Law of Corporations (1850), p. 262. "Disfranchisement" signifies the taking a franchise from a man for some reasonable cause (*Symmers* v. *R.* (1776), 2 Cowp. 489, 502), and must not be confused with "amotion," which is the depriving of a corporate officer of his office; see p. 330, *post*.

(*q*) *Booth* v. *Arnold*, [1895] 1 Q. B. 571, C. A., where the right of a municipal corporation to expel a member was held not to have been taken away by the Municipal Corporations Act.

(*r*) *Symmers* v. *R.*, *supra*, at p. 503.

(*s*) *R.* v. *York Corporation* (1729), 2 Ld. Raym. 1564, 1566; *Bagg's Case* (1616), 11 Co. Rep. 93 b, 99 a.

(*t*) *Bagg's Case*, *supra*.

(*a*) *R.* v. *York Corporation*, *supra*, at p. 1566; *R.* v. *Chalke* (1697), 1 Ld. Raym. 225.

(*b*) *R.* v. *Andover* (*Village*) (1701), 12 Mod. Rep. 665.

SECT. 4. Disfranchisement.

Causes of disfranchisement.

728. A corporator may be disfranchised for an offence against his duty as a corporator, of which offence the corporation is the judge (*c*), or for a crime in its nature heinous and atrocious, and against the offender's general duty as a subject, yet not particularly relating to his corporate duty; or for an offence that combines both the foregoing (*d*).

Where a member of a corporation has committed an offence against his duty as a corporator as well as an offence indictable at common law, he may be disfranchised for the first-mentioned offence without having been convicted of the second (*e*).

Words of contempt or *contra bonos mores*, although spoken against the chief officer of the corporation, are grounds for punishment, not disfranchisement (*f*). Similarly, if a man conspires with others to do, but does not himself execute, something which, if done by himself, would warrant his disfranchisement, it is not a sufficient ground for his disfranchisement, but for punishment only (*g*).

Restoration.

729. Where a corporator has been illegally disfranchised and has been afterwards restored, the order for restoration relates back to his original right so as to render the disfranchisement a nullity from the beginning (*h*).

Limitation on *quo warranto* proceedings.

730. As a general rule, the court will not grant a *quo warranto* information against a member who has been in the quiet enjoyment of his franchise for six years (*i*).

Part IV.—Government.

SECT. 1.—*Officers.*

SUB-SECT. 1.—*Appointment of Officers.*

Appointment of officers.

731. In a corporation aggregate there are generally certain offices (*k*) to which certain persons are appointed or elected for the

(*c*) *R.* v. *Richardson* (1758), 1 Burr. 517, 539.

(*d*) *R.* v. *Liverpool Corporation* (1759), 2 Burr. 723, 732. This was a case of amotion from the office of common councilman in a municipal corporation, but it appears to be also sufficient authority for the statement in the text. The cause of disfranchisement ought to be grounded upon an act which is against the duty of a corporator, and to the prejudice of the good of the corporation whereof he is a member, and against his oath which he took when he was admitted to membership (*Bagg's Case* (1616), 11 Co. Rep. 93 b, 98 a). The fact that a corporator, having a right, as such, to pasture ten head of cattle, but no more, on a common belonging to the corporation, pastured more cattle on the same common in the name of another corporator, was held not to be sufficient ground upon which to disfranchise him (*R.* v. *Great Grimsby Corporation* (1832), 1 L. J. (M. C.) 23, where the corporation alleged fraud, but the court held that to be immaterial).

(*e*) *R.* v. *Derby Corporation* (1735), Lee *temp.* Hard. 153.

(*f*) *Bagg's Case*, *supra*.

(*g*) *Ibid.*

(*h*) *Symmers* v. *R.* (1776), 2 Cowp. 489, 503.

(*i*) *R.* v. *Dicken* (1791), 4 Term Rep. 282, 284.

(*k*) It is impossible to make any general statement as to these offices, as they

SECT. 1. Officers.

purpose of performing duties for the benefit of the corporation and the corporators. Where one of such offices becomes vacant the corporation has a right to have it filled (*a*), and the officers of the corporation may be compelled by *mandamus* to proceed to cause the office to be filled, and that notwithstanding that an information in the nature of a *quo warranto* is pending against one of such officers (*b*).

When office vacant.

An office cannot be said to be vacant when a person is in actual exercise of the office, even though under an irregular appointment (*c*), and it will be necessary for the occupier to be regularly removed from the office, but it can be re-filled (*d*). Where a person is elected to fill an office erroneously supposed to be vacant, the election will be bad, and cannot be referred to another similar office which was also vacant at the time of the election (*e*). A person *de facto* in possession of an office is presumed to be rightly in possession until the contrary is established by due course of law (*f*), and after the death of a person who has held an office his eligibility for that office cannot be disputed, but only the fact whether he did hold the office or not (*g*).

Presumption as to legal appointment.

732. Where a person may be acting under either of two appointments, the one legal the other not so, it will be presumed that he acts under that which is legal (*h*).

The court in its discretion will not interfere to disturb the possession of an office which a corporator has held for upwards of six years (*i*).

Qualification for office.

733. As a general rule a person will not be eligible to fill a corporate office unless he possesses certain qualifications specified in the constitution of the particular corporation. Thus, where several charters authorise the members to elect a certain officer "from among themselves," and a later charter dealing with the election to the same office omits the words "from among themselves," the omission in the later charter does not operate to enlarge the limitation imposed by the previous charter, such limitation being also supported by usage both before and after the later charter (*j*).

vary according to the particular class to which a corporation belongs. Reference, therefore, should be made to the appropriate title, for a list of which see p. 300, *ante*. As to when the appointment must be under seal, see p. 381, *post*.

(*a*) *R.* v. *Cambridge Corporation* (1767), 4 Burr. 2008, 2010.

(*b*) *R.* v. *Grampound Corporation* (1795), 6 Term Rep. 301. For mandamus and *quo warranto* generally, see title CROWN PRACTICE.

(*c*) *R.* v. *Grimshaw* (1847), 10 Q. B. 747, *per* PATTESON, J., at p. 754.

(*d*) *R.* v. *Truro Corporation* (1820), 3 B. & Ald. 590. As to removal from office, see p. 330, *post*.

(*e*) *R.* v. *Smith* (1814), 2 M. & S. 406.

(*f*) *Piper* v. *Dennis* (1698), 12 Mod. Rep. 253.

(*g*) *R.* v. *Spearing* (1771), cited in *R.* v. *Stacey* (1785), 1 Term Rep. 1, 4.

(*h*) *R.* v. *Thomas* (1838), 3 Nev. & P. (Q. B.) 288, *per* LITTLEDALE, J., at p. 293.

(*i*) *R.* v. *Brooks* (1828), 2 Man. & Ry. (K. B.) 389, where the court acted under the statute 32 Geo. 3, c. 58 (repealed by Statute Law Revision Act, 1887 (50 & 51 Vict. c. 59)), which was applicable to municipal corporations only, but it is apprehended that the court would adopt the same period in the case of other corporations; see *R.* v. *Dicken* (1791), 4 Term Rep. 282, 284; and p. 325, *ante*.

(*j*) *R.* v. *Grant* (1830), 8 L. J. (o. s.) (K. B.) 352. Where a person is required to hold one office in order to qualify for another office, the second office is

734. The instrument creating a corporation may expressly disqualify certain persons from holding office (*k*); but a corporation cannot by means of a bye-law narrow the number of persons eligible for election to corporate offices (*l*). Where a person has once been elected to an office he has a right to be admitted to it; and a bye-law seeking to impose a disqualification on a person duly elected will not be valid (*m*).

Disqualification.

It is probable that an infant cannot be elected to a corporate office (*n*); but it appears to be clear that even if elected he cannot be admitted (*o*) to any office, especially if the office be one of pecuniary trust (*p*).

Residence.

735. An officer of a corporation is not obliged to reside in a certain place or within a certain district, unless the constitution or the nature of his office or public justice or convenience require him to do so (*q*), but where residence in a particular locality is necessary to qualify a candidate for a corporate office, the duration of such residence prior to election is immaterial, provided that the residence was in good faith (*r*). Where by a charter it is declared that the officer should be a resident within a certain district on pain of forfeiting a penalty, non-residence within the district does not disqualify him from holding office, but only renders him liable to the penalty (*a*).

Acceptance of office.

736. A person who has been elected to a corporate office is bound to accept the same and take the prescribed oath or declaration (if any) within a reasonable time after his election, or he will be deemed to have waived his election (*b*); and where an officer is required by the constitution to be sworn to do and observe certain matters pertaining to his office, his title to his office is not complete until he has taken the oath required of him or made the substituted statutory

founded on, and not derived from or under, the first (*R.* v. *Stokes* (1813), 2 M. & S. 71, 74). So, where the charter of incorporation creates a superior class of officer to be chosen out of an inferior class, and certain persons are nominated by the charter to be the first officers of the superior class, the persons so nominated will be deemed to have been selected from the inferior class (*R.* v. *Downes* (1826), 5 B. & C. 182). Where by custom the qualification for office is that the candidate should have served an apprenticeship to a corporator carrying on a trade, the service of a solicitor under articles of clerkship will not afford the requisite qualification (*R.* v. *Doncaster Corporation* (1828), 7 B. & C. 630).

(*k*) See, for instance, Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 12 (1), 17 (1), 18 (1), 25 (2), 171 (1); Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 4 (7); Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46.

(*l*) *R.* v. *Tunwell* (1783), 3 Doug. (K. B.) 207.

(*m*) *R.* v. *Saddlers' Co.* (1860), 3 E. & E. 42, *per* COCKBURN, C.J., at p. 68.

(*n*) The point is doubtful and seems never to have been actually decided; see *R.* v. *White* (1733), Lee *temp.* Hard. 8; *R.* v. *Carter* (1774), 1 Cowp. 58.

(*o*) *Carter's* (*Sir John*) *Case* (1774), Lofft, 516, *per* Lord MANSFIELD, at p. 519.

(*p*) *Claridge* v. *Evelyn* (1821), 5 B. & Ald. 81, *per* ABBOTT, C.J., at p. 86.

(*q*) *R.* v. *Portsmouth Corporation* (1824), 3 B. & C. 152.

(*r*) *R.* v. *Sargent* (1793), 5 Term Rep. 466.

(*a*) *R.* v. *Williams* (1813), 2 M. & S. 135, 143, 144; and compare *R.* v. *Leyland* (1814), 3 M. & S. 184.

(*b*) *R.* v. *Jordan* (1736), Lee *temp.* Hard. 255. As to declarations in lieu of oaths, see Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), ss. 12, 13, 15.

SECT. 1. Officers.

declaration (*c*). Thus, where a charter of incorporation directs that a particular officer of the corporation shall continue in office until another is duly elected and sworn, the latter, though duly elected, cannot act before he has been duly sworn (*d*).

By the terms of the charter the person elected may be compelled to accept office (*e*). Even where a bye-law imposes a fine upon a member in the event of his refusing to accept a corporate office, it does not follow that payment of the fine will exempt him from taking the office, for he may be compelled to take the office notwithstanding his having paid the fine (*f*). But a person may be ineligible for holding a corporate office, or may have the option to refuse it by reason of his having already held the same office within a certain period prescribed by the constitution (*g*).

Tenure of office.

737. Where an officer is appointed for an indefinite period, he is presumed to continue to hold his office until the contrary is shown (*h*). As a general rule of construction, a power to appoint an officer implies a power to appoint for life, unless a contrary intention is manifest (*i*). An officer who is elected *quamdiu se bene gesserit*, that is, during good behaviour, is elected to all intents and purposes for life, and has what is called a freehold office for his life (*k*).

By custom an officer may be appointed during pleasure, but the custom must be specially pleaded and proved (*l*), so, where the constitution authorises the appointment of an officer of the corporation, but at the same time gives the appointors a very wide discretionary power to remove a person so appointed from his office, the appointment is at pleasure only and may be determined at discretion (*m*).

Where the charter of a corporation provides that a particular officer shall be chosen annually, it is directory only, and must not be construed as terminating the office at the end of the year after his election; but he will continue in office until his death or removal or another is elected and (if necessary) admitted (*n*). But the constitution of the corporation may expressly provide for the retirement of the officers at the end of the year (*o*). So where a new charter, after abolishing certain old methods, establishes a new method of election to corporate office "for one whole year

(*c*) *R.* v. *Roberts* (1835), 5 Nev. & M. (K. B.) 130; see also *R.* v. *Swyer* (1830), 10 B. & C. 486; and Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 35.

(*d*) *Prowse* v. *Foot* (1725), 2 Bro. Parl. Cas. 289; *Pender* v. *R.* (1725), 2 Bro. Parl. Cas. 294.

(*e*) *R.* v. *Leyland* (1814), 3 M. & S. 184. But he must be qualified (*Re Richmond* (1863), 11 W. R. 65).

(*f*) *R.* v. *Bower* (1823), 2 Dow. & Ry. (K. B.) 842.

(*g*) *R.* v. *Swyer* (1830), 10 B. & C. 486.

(*h*) *Steward* v. *Dunn* (1844), 1 Dow. & L. 642, 647.

(*i*) Grant, Law of Corporations (1850), p. 34.

(*k*) *Robarts* v. *London Corporation* (1882), 46 L. T. 623, *per* KAY, J., at p. 626.

(*l*) *R.* v. *Coventry Corporation* (1698), 1 Ld. Raym. 391.

(*m*) *R.* v. *Darlington School* (*Governors*) (1844), 6 Q. B. 682, 716, Ex. Ch.

(*n*) *Prowse* v. *Foot*, *supra*.

(*o*) Compare Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 13, 14.

then next following," the old power of holding over is taken away (*p*).

The entire estate in an office is in the occupant, there being no reversionary estate in it so long as it is full (*q*).

SUB-SECT. 2.—*Powers and Duties.*

Powers and duties.

738. It is the right and duty of the officers of a corporation to inform and guide the corporators in matters affecting the corporate interests (*r*). But the powers of officers vary considerably according to the nature and constitution of the corporation (*s*).

A corporation aggregate with a head being one body, the head as such can do nothing without the concurrence of the body, for he is only a part of the entire corporation (*t*). But usage and precedent may be taken into consideration (*u*).

Relation between higher and lower offices.

739. Where a charter creates a series of offices within the corporation and directs that only persons who have held the lower offices shall be eligible to hold the higher, a person who is, by the charter, appointed to be the first holder of a higher office will, by implication, be deemed to be entitled to all the privileges of the lower office (*a*). But where a person holding a subordinate office is elected to a superior office and is subsequently ousted therefrom, he does not by such ouster return to his former subordinate office (*b*).

Deputy.

740. A corporate officer cannot appoint a deputy to act for him generally, unless he have clear authority to do so by the constitution (*c*), and it is immaterial that a bye-law made subsequent to the charter may require him "or his sufficient deputy" to execute the duties of his office (*d*). Where there is a power by charter for an officer to appoint a deputy, the latter has as a general rule all the powers of his principal, but such powers are only corporate powers (*e*).

(*p*) *R.* v. *Philips* (1720), 1 Stra. 394.

(*q*) *St. Katherine's Hospital Case* (1671), 1 Vent. 149, 151.

(*r*) *Peel* v. *London and North Western Rail. Co.*, [1907] 1 Ch. 5, C. A., *per* BUCKLEY, L.J., at p. 21. A corporation will be deemed to have notice of all matters which come to the knowledge of its officers, and which it is their duty to communicate to it (*Re Hampshire Land Co.*, [1896] 2 Ch. 743; *Re Fenwick, Stobart & Co., Deep Sea Fishery Co.'s (Ltd.) Claim*, [1902] 1 Ch. 507, 511; *Re David Payne & Co., Ltd., Young* v. *David Payne & Co., Ltd.*, [1904] 2 Ch. 608, C. A.).

(*s*) See p. 358, *post*.

(*t*) *Southampton Corporation Case* (1483), Jenk., case 9, p. 162. Where, therefore, on a sale by auction of lands belonging to a corporation, the head of the corporation signed the contract on its behalf, it was held that he could not sue the purchaser for breach of contract (*Bowen* v. *Morris* (1810), 2 Taunt. 374, Ex. Ch.).

(*u*) *Southampton Corporation Case*, *supra*, where the head had for a long period given receipts for certain yearly payments payable to the corporation, and the corporation was held to be bound by them.

(*a*) *R.* v. *Perkins* (1824), 4 Dow. & Ry. (K. B.) 427.

(*b*) *R.* v. *Hubball* (1826), 9 Dow. & Ry. (K. B.) 143.

(*c*) *R.* v. *Gravesend Corporation* (1824), 4 Dow. & Ry. (K. B.) 117, where the court seemed to think that an officer might appoint a deputy to do a purely ministerial act for him, subject to the approval of the corporation.

(*d*) *Ibid.*

(*e*) *Jones* v. *Williams* (1825), 3 B. & C. 762, *per* HOLROYD, J., at p. 771.

SUB-SECT. 3.—*Vacation of Office (Amotion).*

Power of amotion.

741. Amotion is the depriving of a corporate officer of his office (*f*). A power of amotion is incident to a corporation (*g*); for it is necessary to the good order and government of corporate bodies that there should be such a power; and a corporation may by its incidental power to make bye-laws confer upon itself power to amove for just cause, although there is no express power by the charter or prescription to make such a bye-law (*h*).

Effect of forfeiture.

742. Where a person has been duly admitted to a corporate office and by some act or circumstance has forfeited it, the mere act or circumstance does not operate as a vacation of the office, but the holder must be duly amoved therefrom by the corporation or other competent authority (*i*), which cannot as a rule be done until the officer has been heard in his defence, or at least had notice of the intention to remove him (*j*).

Removal of life officer.

743. Unless there is a clear direction to the contrary in the charter of incorporation, a freehold office within a corporation is not determined during the life of the holder without some formal act, such as amotion (*k*), and such person is entitled to be summoned before he is removed, and where he has quitted the country temporarily an endeavour should be made to communicate with him. But where he has absconded without any apparent intention of returning, it will not be necessary to search for him before taking proceedings to remove him (*l*). Such an officer may also be suspended; and a mere irregularity in procedure is immaterial if there exists good cause for his suspension (*m*).

Removal of officer at will.

744. Where a person is appointed to and holds an office at the will of the corporation, he may be removed from it at the will of the corporation (*n*), which may be signified to him by mere declaration thereof by the competent authority (*o*), though in some cases it must be under the corporate seal (*p*).

(*f*) Grant, Law of Corporations (1850), p. 240. Amotion must not be confused with disfranchisement, which is the expulsion of a corporator from membership; see p. 324, *ante*.

(*g*) *Booth* v. *Arnold*, [1895] 1 Q. B. 571, C. A.

(*h*) *R.* v. *Richardson* (1758), 1 Burr. 517, 539. For an instance of an express power given by charter, see *R.* v. *West Looe Corporation* (1824), 5 Dow. & Ry. (K. B.) 414. A power to amove is implied from the incidental power to make bye-laws (*R.* v. *Doncaster Corporation* (1729), 1 Barn. (K. B.) 264). As to the power to make bye-laws, see p. 334, *post*.

(*i*) *R.* v. *Heaven* (1788), 2 Term Rep. 772; and compare *Hardwick* v. *Brown* (1873), L. R. 8 C. P. 406. As to amotion by a committee, see p. 331, *post*.

(*j*) *R.* v. *Saddlers' Co.* (1863), 10 H. L. Cas. 404.

(*k*) *R.* v. *Truro Corporation* (1820), 3 B. & Ald. 590.

(*l*) *R.* v. *Harris* (1831), 1 B. & Ad. 936, where the officer in question had been charged with forgery.

(*m*) *R.* v. *London Corporation* (1787), 2 Term Rep. 177.

(*n*) *Dighton's Case* (1670), T. Raym. 188; *R.* v. *Darlington School* (*Governors*) (1844), 6 Q. B. 682, 716, Ex. Ch.; *Hayman* v. *Rugby School* (*Governors*) (1874), L. R. 18 Eq. 28.

(*o*) *Robarts* v. *London Corporation* (1882), 46 L. T. 623, *per* KAY, J., at p. 629; and see *R.* v. *Cambridge Corporation* (1679), 2 Show. 69.

(*p*) *Holt* v. *Medlicott* (1676), Freem. (K. B.) 428.

The surrender of the charter will operate to determine an office held under it during pleasure (*q*). But a judgment given in *quo warranto* against a corporation, "that the liberties thereof be seized into the King's hands," will not operate as an amotion of its officers (*r*).

Construction of power.

745. A power to amove is strictly interpreted. Thus, the word "majority" will, in connection with such a power, be construed to mean a majority of the whole corporation, including the persons to be amoved (*s*).

Power of select body.

746. By special provision of the constitution the power of amotion may be conferred upon a select body within the corporation (*t*). A corporation may perform the duty of examining into the complaint against the officer by means of a committee of its members, and, on the report of such committee, dismiss him, even though the office be a freehold (*a*). Corporations in general have power to amove the members of a select body for sufficient cause (*b*).

The removal of their officers does not extinguish the rights of the corporation (*c*).

Causes of amotion.

747. There are three classes of offences for which an officer of a corporation may be discharged: (1) such as have no immediate relation to his office; but are in themselves of so infamous a nature as to render the offender unfit to execute any public franchise (*d*); (2) such as are only against the duty of his corporate office, and amount to breaches of the tacit condition annexed to his office or franchise (*e*); and (3) offences that are not only against the duty of his office, but are also indictable at common law (*f*).

For offences of the first class there must be indictment and conviction previous to amotion; but for offences of the second and third classes the officer may be amoved without previous conviction (*g*).

Non-user.

Whether non-user of an office is a cause of amotion generally depends upon the nature of the office, the time of non-user, and other circumstances (*h*). Inability to perform the duties of office

(*q*) Grant, Law of Corporations (1850), p. 47.

(*r*) *Smith's Case* (*Sir James*) (1691), 4 Mod. Rep. 53. As to *quo warranto*, see title CROWN PRACTICE.

(*s*) *R.* v. *Sutton* (1711), 10 Mod. Rep. 74, 76.

(*t*) *R.* v. *Lyme Regis Corporation* (1779), 1 Doug. (K. B.) 149, *per* BULLER, J., at pp. 158, 159.

(*a*) *Osgood* v. *Nelson* (1872), L. R. 5 H. L. 636.

(*b*) *R.* v. *London Corporation* (1829), 4 Man. & Ry. (K. B.) 36, *per* Lord TENTERDEN, C.J., at p. 60.

(*c*) *Colchester Corporation* v. *Seaber* (1766), 3 Burr. 1866, 1873.

(*d*) *R.* v. *Tiverton Corporation* (1723), 8 Mod. Rep. 186.

(*e*) *R.* v. *Chalke* (1697), 1 Ld. Raym. 2261. A mere breach of a bye-law is not sufficient (*R.* v. *Great Grimsby Corporation* (1832), 1 L. J. (M. C.) 23).

(*f*) *R.* v. *Liverpool Corporation* (1759), 2 Burr. 723, *per* Lord MANSFIELD, C.J., at p. 733.

(*g*) *R.* v. *Richardson* (1758), 1 Burr. 517, *per* Lord MANSFIELD, at p. 538; *R.* v. *Liverpool Corporation*, *supra*, at p. 732; *R.* v. *Carlisle Corporation* (1722), Fortes. Rep. 200.

(*h*) *R.* v. *Ponsonby* (1755), 1 Ves. Sen. 6, *per* RYDER, C.J., at p. 6; affirmed (1758), 2 Bro. Parl. Cas. 311. For an example of amotion for such cause, see *Bruce's* (*Lord*) *Case* (1728), 2 Stra. 819 (non-attendance of recorder).

SECT. 1. Officers.

is a good ground for amotion (*i*), so is negligence in the performance of the duties (*j*), and bribery (*k*), and breach of trust (*l*). Non-residence of an officer within a certain district is not a sufficient ground for an information in the nature of a *quo warranto* against him without previous amotion or some other proceeding previously had against him for such non-residence (*m*).

Resignation of head.

748. The chief officer of a corporation will not be allowed to give up his office, either collusively or voluntarily, when those whose rights depend on it are desirous of maintaining it without any charge or expense to him (*n*).

Incompatible offices.

749. The appointment by a corporation of one of its officers to an office incompatible with that which he holds prior to such appointment, is equivalent to an amotion of the officer from that office (*a*). This is so, whether the second office is superior or inferior to the first (*b*). Offices are said to be incompatible where the holder of two offices cannot in every instance discharge the duties of each (*c*). The evidence adduced in support of a rule for a *quo warranto* upon the ground that a person has vacated an office by the acceptance of a second office incompatible with the first must show a valid appointment to the second (*d*). The second office must also have been accepted; for it is impossible to turn any person out of his office by electing him to another against his consent (*e*).

Amotion at adjourned meeting.

750. It is no objection to the amotion of an officer of a corporation that the corporate meeting at which the proceedings on amotion occurred was held by adjournment from one of the charter days at which, by the constitution of the corporation, every member of the corporation is supposed to be present (*f*).

(*i*) *R.* v. *London Corporation* (1785), 4 Doug. (K. B.) 360, 386.
(*j*) *R.* v. *Wells Corporation* (1767), 4 Burr. 1999.
(*k*) *R.* v. *Tiverton Corporation* (1723), 8 Mod. Rep. 186.
(*l*) *R.* v. *Doncaster Corporation* (1729), 1 Barn. (K. B.) 264.
(*m*) *R.* v. *Ponsonby* (1758), 2 Bro. Parl. Cas. 311.
(*n*) *R.* v. *Dawes* (1769), 4 Burr. 2277, 2279.
(*a*) *R.* v. *Trelawney* (1765), 3 Burr. 1615; *R.* v. *Pateman* (1788), 2 Term Rep. 777. Where a person holding an office in a corporation accepts another office which is incompatible with the first, such acceptance does not, as a general rule, operate automatically as an absolute avoidance of the former office, however much it may be a ground for removal or amotion from that office, unless the first office be one which he could terminate by his own act simply, or the acceptance be made by, or with the concurrence of, that authority which has the power to accept the surrender of the first or to amove from it (*R.* v. *Patteson* (1832), 4 B. & Ad. 9, *per* PARKE, J., at p. 26. But see, *contra*, *R.* v. *Hughes* (1826), 5 B. & C. 886; *Milward* v. *Thatcher* (1787), 2 Term Rep. 81). In *R.* v. *Patteson*, *supra*, the previous authorities on the subject were reviewed, and it was expressly stated that the court did not mean to trench upon the rule that two incompatible offices cannot be held together.
(*b*) *Milward* v. *Thatcher*, *supra*.
(*c*) *R.* v. *Tizzard* (1829), 9 B. & C. 418. Thus, where the one officer's accounts are audited by a second officer, or the first acts ministerially under the second, who is a judicial officer, the offices are incompatible (*R.* v. *Pateman*, *supra*; *Milward* v. *Thatcher*, *supra*).
(*d*) *R.* v. *Day* (1829), 9 B. & C. 702.
(*e*) *Milward* v. *Thatcher*, *supra*.
(*f*) *R.* v. *Harris* (1831), 1 B. & Ad. 936.

Appeal to visitor.

751. Where a member of a corporation which is subject to visitatorial jurisdiction (*g*) has been amoved, and desires to appeal from the decision of the corporate authority to amove him, his proper course is, not to appeal to the High Court of Justice to restore him to the status from which he was amoved, but to appeal to the visitor as the proper judicial authority in such a case appointed by the founder (*h*).

Proceedings in *quo warranto*.

752. An information in the nature of *quo warranto* will lie for usurping an office, whether created by charter of the Crown alone or by the Crown with the consent of Parliament, provided that the office be of a public nature and a substantive office, and not merely the function or employment of a deputy or servant held at the will of others (*i*). Where such proceedings by information are to be taken against several persons, there must be several informations, so that each may disclaim (*k*).

A *quo warranto* information will not be refused by the court on the ground that the effect will be to dissolve the corporation (*a*). It will be granted at the instance of a private relator against a member of a corporation on grounds affecting his own title, and this notwithstanding that the same grounds affect also every other member of the corporation (*b*).

Resignation of office by a person against whom a rule *nisi* has been obtained on a *quo warranto* information is no objection to the rule being made absolute (*c*).

Effect of amotion.

753. A judgment of ouster against a corporate officer is conclusive against all persons deriving title to office through him, except where the judgment has been obtained by fraud (*d*).

Restoration.

754. A power to restore after amotion is implied in every case where there is a power to elect to an office (*e*). A person who has been amoved by the corporation from his office and restored to it

(*g*) See p. 355, *post*.

(*h*) *R.* v. *Chester* (*Dean and Chapter*) (1850), 15 Q. B. 513.

(*i*) *Darley* v. *R.* (1846), 12 Cl. & Fin. 520, H. L. But the court will not grant an information *in quo warranto* against an officer of a corporation where the real object of the proceeding is to question the validity of the constitution (*R.* v. *Taylor* (1840), 11 Ad. & El. 949). For *quo warranto* generally, see title CROWN PRACTICE.

(*k*) *R.* v. *Warlow* (1813), 2 M. & S. 75.

(*a*) *R.* v. *Parry* (1837), 6 Ad. & El. 810. But see *R.* v. *Taylor*, *supra*.

(*b*) *R.* v. *White* (1836), 5 Ad. & El. 613. It is no objection to a relator applying for a *quo warranto* information against a person holding an office in a corporation that since the election of such officer the relator has frequently supported him on various occasions; it not being shown that the relator concurred in such election, or that in subsequent elections in which the same irregularity occurred but was not noticed the relator took part in such elections (*R.* v. *Benney* (1831), 1 B. & Ad. 684). But where the relator has taken part in previous elections, and voted for a candidate against whom the same objection was raised, but overruled, as is put forward by the relator, an objection to his being a relator in such a case will be sustained (*R.* v. *Parkyn* (1831), 1 B. & Ad. 690).

(*c*) *R.* v. *Warlow*, *supra*.

(*d*) *R.* v. *York Corporation* (1792), 5 Term Rep. 66.

(*e*) *Holt's Case of Gray's Inn* (1676), Freem. (K. B.) 442.

SECT. 1. Officers.

by mandamus cannot maintain an action for damages against the members of the corporation who amoved him by a corporate act (*f*).

SECT. 2.—*Regulations.*

SUB-SECT. 1.—*In General.*

Difference between public and private corporations.

755. For the purpose of considering their internal government, corporations may be divided into two classes, namely, (1) public, and (2) private (*g*).

A public corporation, that is to say, a corporation whose object is mainly the maintenance of public order and control in a particular locality, is as a rule governed by the ordinary law (*g*).

A private corporation, that is to say, a corporation whose object is private charity and the like, although subject to the general laws of the realm, is governed by the private rules and regulations laid down by its founder (*g*).

Where the constitution of a corporation is a charter or Act of Parliament, the constitution may contain the rules and regulations, and these may be either imperative or directory (*h*).

Where it is competent for a corporation itself to rectify an irregularity in the management of its internal affairs, the courts will not as a rule interfere to compel such rectification (*i*).

Bye-laws.

All regulations made by a corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called "bye-laws," whether they be valid or invalid in point of law (*j*); but the term may also be applied to regulations binding only on the corporation, its officers and servants (*k*).

SUB-SECT. 2.—*Power to make Bye-laws.*

Extent of powers.

756. Every corporation has the power to make bye-laws relative to the purposes for which it is constituted (*l*). Such bye-laws,

(*f*) *Harman* v. *Tappenden* (1801), 3 Esp. 278, where malice was not charged against the defendants.

(*g*) *Bentley* v. *Ely* (*Bishop*) (1726), Fortes. Rep. 298, 299, reversed without reference to this point *sub nom. Ely* (*Bishop*) v. *Bentley* (1732), 2 Bro. Parl. Cas. 220. The founder of a corporation is he who gives to it its first possessions. If the King and a subject give possessions to a corporation at the same time, the King alone is its founder by virtue of his prerogative (1 Roll. Abr. (1668), p. 514). Where the Crown is founder and has conferred bye-laws or statutes for the government of the corporation, a breach of such bye-laws or statutes does not constitute a crime or offence against the Crown (*Bentley* v. *Ely* (*Bishop*), *supra*).

(*h*) *Foss* v. *Harbottle* (1843), 2 Hare, 461, 495.

(*i*) *Browne* v. *La Trinidad* (1887), 37 Ch. D. 1, C. A., *per* LINDLEY, L.J., at p. 17.

(*j*) *London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee*, [1892] 3 Ch. 242, C. A., *per* LINDLEY, L.J., at p. 25; *A.-G.* v. *Belfast Corporation*, [1898] 1 I. R. 200, 217; *Hopkins* v. *Swansea Corporation* (1839), 4 M. & W. 621, *per* Lord ABINGER, C.B., at p. 630.

(*k*) *London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee*, *supra*.

(*l*) *Norris* v. *Staps* (1616), Hob. 210, *per* HOBART, C.J.; *R.* v. *Westwood* (1830), 4 Bli. (N. S.) 213, H. L., *per* PARKER, J., at p. 225; *per* GASELEE, J., at

SECT. 2. Regulations.

however, do not bind persons other than members (*m*), unless they are made under statutory authority (*n*), or unless it is shown that they have been brought to the knowledge of the person sought to be bound by them (*o*), and that he has agreed to be so bound (*p*). A private corporation, therefore, can only make bye-laws to bind its own members and touching matters that concern its own private affairs (*q*). A public corporation, however, being in this respect empowered by statute (*r*), may make bye-laws affecting the public, or some portion of the public, and having the force of law within the sphere of their legitimate operation (*s*).

Exercise of power. Select body.

The power to make bye-laws is *primâ facie* to be exercised by the corporation at large (*t*). By special provision of the constitution only can the power be given to a select body within a corporation (*a*). If, however, the power be given by a charter to a select body, it is only an abridgment *pro tanto* of the powers incidental to the whole body; so that all powers not expressly conferred on the select body remain incidental to the whole body (*b*); they are not abrogated by implication (*c*). But in such a case the select body does not represent the whole community, and therefore cannot assume to itself what belongs to the body at large. Where, however, the power of making bye-laws is in the body at large, it may delegate the right to a select body; who will then become the representative of the whole community (*d*).

Time of making.

757. Where the constitution gives power to make bye-laws for the maintenance and government of the corporation, such bye-laws

p. 251; *per* LITTLEDALE, J., at p. 263; *Chilton* v. *London and Croydon Rail. Co.* (1847), 16 M. & W. 212, *per* PARKE, B., at p. 228.

(*m*) Formerly a corporation might make ordinances or constitutions by custom or royal charter for things which concern the public good, as repair of the church or common highways, or the like (*London's (Chamberlain) Case* (1590), 5 Co. Rep. 62 b, 63 a. By prescription, clearly proved, an ancient corporation might make bye-laws binding on others than those of its own body (*Dodwell* v. *Oxford University* (1680), 2 Vent. 33). Thus, a corporation constituted by royal charter might, by special power in the charter, make bye-laws binding on all persons carrying on a particular trade within a particular locality, notwithstanding that some of them might not belong to the corporation (*Butchers' Co.* v. *Morey* (1790), 1 Hy. Bl. 370). But no bye-law could be binding outside the jurisdiction created or allowed by the constitution (*Horners Co.* v. *Barlow* (1687), 3 Mod. Rep. 159).

(*n*) *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349, 379.

(*o*) *Royal Bank of India's Case* (1869), 4 Ch. App. 252.

(*p*) *London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee*, [1892] 3 Ch. 242, C. A., *per* LINDLEY, L.J., at p. 255.

(*q*) *Cuddon* v. *Estwick* (1703), 6 Mod. Rep. 123, 124; and compare *Child* v. *Hudson's Bay Co.* (1723), 2 P. Wms. 207. As to the power of a majority of parishioners to make bye-laws binding on the minority, see *Gosling* v. *Veley* (1850), 12 Q. B. 328, 347, Ex. Ch.

(*r*) See titles LOCAL GOVERNMENT; PUBLIC HEALTH ETC.; RAILWAYS AND CANALS; TRAMWAYS AND LIGHT RAILWAYS.

(*s*) *Kruse* v. *Johnson*, [1898] 2 Q. B. 91, *per* Lord RUSSELL, C.J., at p. 96.

(*t*) *R.* v. *Westwood* (1830), 4 Bli. (N. S.) 213, H. L.

(*a*) *Feltmakers' Co.* v. *Davis* (1797), 1 Bos. & P. 98, 100; and compare *Hills* v. *Hunt* (1854), 15 C. B. 1.

(*b*) *R.* v. *Westwood*, *supra*.

(*c*) *Ibid.*

(*d*) *R.* v. *Spencer* (1766), 3 Burr. 1827, 1837.

SECT. 2. Regulations.

may be made at any time and from time to time after incorporation (*e*). Every bye-law may be altered or repealed by the corporation making it (*f*), or by Act of Parliament (*g*). But where the bye-laws are in the form of statutes or ordinances given by the founder of the corporation, he can only repeal them if he has expressly reserved to himself the power to do so (*h*).

SUB-SECT. 3.—*Validity of Bye-laws.*

Test of validity.

758. Where the constitution of a corporation provides for the making of bye-laws according to a certain form, and in a particular manner, the provisions of the constitution must be strictly followed (*i*); and if the bye-laws are required to be confirmed by some external authority, such confirmation must be obtained, as otherwise their validity will depend entirely upon agreement (*k*). The confirmation of a bye-law, however, by the confirming authority will not make it valid, if it is otherwise invalid (*l*).

Ultra vires.

759. In testing the validity of a bye-law regard must be had to the intention of the founder or creating authority (*m*). A bye-law must not be opposed to the constitution of the particular corporation (*n*), nor can it be made the means of remedying a defect therein (*o*). But a corporation may, by custom, have power to make a bye-law providing a fit remedy in case any ancient custom be hard or defective (*p*).

Conditions of validity.

A bye-law cannot explain a charter, and although it may lessen or enforce the powers given to the corporation, it cannot increase them (*q*).

A bye-law is always deemed to have been made with the knowledge and consent of every member of the corporation. No member can plead ignorance of a bye-law (*r*), or allege that the

(*e*) *R.* v. *Dulwich College* (1851), 17 Q. B. 600, 628.

(*f*) *R.* v. *Ashwell* (1810), 12 East, 22, *per* Lord ELLENBOROUGH, C.J., at p. 29; and compare *A.-G.* v. *Middleton* (1751), 2 Ves. Sen. 327.

(*g*) 1 Roll. Abr. 363; stat. 12 Hen. 7, c. 6.

(*h*) *Philips* v. *Bury* (1694), Skin. 447, 513.

(*i*) *Dunston* v. *Imperial Gas Light Co.* (1832), 3 B. & Ad. 125.

(*k*) *London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee*, [1892] 3 Ch. 242, C. A.

(*l*) *Elwood* v. *Bullock* (1844), 6 Q. B. 383; *R.* v. *Wood* (1855), 5 E. & B. 49.

(*m*) *R.* v. *Ginever* (1796), 6 Term Rep. at p. 732, 736.

(*n*) *R.* v. *Bumstead* (1831), 2 B. & Ad. 699; *R.* v. *Cutbush* (1768), 4 Burr. 2204; *Hoblyn* v. *R.* (1772), 2 Bro. Parl. Cas. 329; *Bentham* v. *Hoyle* (1878), 3 Q. B. D. 289. Thus, where the constitution gave to certain persons a power to exercise their reasonable discretion in a matter affecting the objects for which the corporation was founded, a bye-law attempting to abridge that power was held bad as being an attempt to alter the constitution (*R.* v. *Darlington School* (*Governors*) (1844), 6 Q. B. 682, 717, Ex. Ch.). As to bye-laws regulating the election of members and officers, see pp. 350 *et seq.*, *post*.

(*o*) Where the constitution makes no provision for the case of an equal number of votes being cast at a corporate meeting for and against a resolution submitted to it, a bye-law cannot confer a casting vote upon any one present at the meeting (*R.* v. *Ginever*, *supra*).

(*p*) *Clark* v. *Denton* (1830), 1 B. & Ad. 92.

(*q*) *R.* v. *Weymouth Corporation* (1740), 7 Mod. Rep. 373.

(*r*) *Trinity House* (*Master etc.*) v. *Crispin* (1681), T. Jo. 144; and see *R.* v. *Trevenen* (1819), 2 B. & Ald. 339; and *Vintners' Co.* v. *Passey* (1757), 1 Burr. 235, 239.

corporation had no power to make or enforce a bye-law which was in existence at the time when he became a member or officer (*s*).

Reasonableness.

760. A bye-law must be reasonable (*t*); and in determining this question it is material to consider the relation of its fairness to the persons affected by it (*a*), as different principles are applicable to different classes of corporations (*b*).

(*s*) *Piper* v. *Chappell* (1845), 14 M. & W. 624, 640.

(*t*) *Mitchell* v. *Reynolds* (1712), 10 Mod. Rep. 130, 133; 1 Smith, L. C. 11th ed., 406, 408, 410; *Elwood* v. *Bullock* (1844), 6 Q. B. 383; *Stiles* v. *Galinski*, [1904] 1 K. B. 615; *Arlidge* v. *Islington Corporation*, [1909] 2 K. B. 127. A bye-law is not unreasonable merely because particular judges may think that it goes further than is prudent, or necessary, or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there (*Kruse* v. *Johnson*, [1898] 2 Q. B. 94, *per* Lord RUSSELL, C.J., at p. 100; as explained in *White* v. *Morley*, [1899] 2 Q. B. 34, *per* CHANNELL, J., at p. 39), or merely because its enforcement may result in inconvenient consequences or damage (*Simmons* v. *Malling Rural Council*, [1897] 2 Q. B. 433, 438), or destruction to property or rights (*Slattery* v. *Naylor* (1888), 13 App. Cas. 446). A bye-law which disqualifies candidates for office if they have ever been bankrupt or insolvent is bad because it is unreasonable (*R.* v. *Saddlers' Co.* (1860), 3 E. & E. 42), unless the word "insolvent" means, not merely inability of the person to whom it refers to pay his debts in full, but inability proved by some outward act, such as stopping payment, or compounding with creditors (S. C. (1863), 10 H. L. Cas. 404, *per* Lord CRANWORTH, at p. 459). Bye-laws merely compelling attendance of members at corporate meetings, or to compel acceptance of corporate office, will, as a matter of principle, be valid; but where a bye-law purports to impose upon the members of the corporation a periodic payment in the nature of a tax to be applied, not for a specific purpose, but for general or indefinite purposes without there being shown to be any necessity for such imposition, it will be bad (*London Tobacco Pipe Makers' Co.* v. *Woodroffe* (1828), 7 B. & C. 838, 853). But a bye-law enabling a toll to be levied for necessary general expenses will be good (Grant, Law of Corporations (1850), pp. 78, 79). A bye-law requiring something to be done (as, for instance, the providing of a dinner) which is not necessary or calculated to further the interests of the corporation at large, will be held to be unreasonable and bad (*Scriveners' Co.* v. *Brooking* (1842), 3 Q. B. 95). A bye-law would probably be held unreasonable if it were found to be partial and unequal in its operation as between different classes, if it is manifestly unjust, if it disclosed bad faith, if it involved such oppressive or gratuitous interference with the rights of those subject to it as could find no justification in the minds of reasonable men (*Kruse* v. *Johnson*, *supra*, *per* Lord RUSSELL, C.J., at p. 99). The fact that a bye-law has been in existence for a long period of time, such as two hundred and thirty years, is fair evidence that there is no intrinsic inconvenience in it (*R.* v. *Ashwell* (1810), 12 East, 22, 29). That which might be good as a contract between parties would not necessarily be good as a bye-law. Thus, an agreement amongst the citizens of a town that they will not sell except in the markets of that town would be good as a contract, but bad as a bye-law (*Adley* v. *Whitstable Co.* (1809), 17 Ves. 315, 323).

(*a*) *Slattery* v. *Naylor*, *supra*, at p. 452; *Kruse* v. *Johnson*, *supra*, *per* Lord RUSSELL, C.J., at p. 96.

(*b*) The question of the validity of bye-laws ought to be considered from different points of view according as they are made by corporations belonging to one or other of two classes—that is, corporations of a public representative character intrusted by Parliament with delegated authority; or corporations of a more private character, such as railway companies, dock companies, and the like which carry on their business for their own profit, although incidentally for the advantage of the public. Bye-laws made by corporations of the first class ought to be "benevolently" interpreted and supported if possible. But those made by bodies of the second class should be jealously watched lest they should work to the public disadvantage (*Kruse* v. *Johnson*, [1898] 2 Q. B. 91, *per* Lord RUSSELL, C.J., at p. 99; but see *contra*, *per* MATHEW, J., at pp. 109 *et seq.*).

SECT. 2. Regulations.

Repugnancy.

761. A bye-law must not be repugnant to the general law (*c*). It is not repugnant merely because it supplements the general law and deals with something which is not dealt with by the general law (*d*). But it must not alter, either expressly or by necessary implication (*e*), the general law by making that lawful which the general law makes unlawful, or that unlawful which the general law makes lawful (*f*).

Certainty.

A bye-law must be certain, that is, it must contain adequate information as to the duties of those who are to obey (*g*).

Ambiguity.

762. Where a bye-law is capable of two constructions, one of which would make it invalid and the other good, the latter construction will prevail (*h*).

A bye-law which is void in part is void altogether (*i*), except when the void part can be severed from that which is good, and the latter can be enforced independently (*k*).

Regulation of trade.

763. A power to make bye-laws for the regulation of trade may be given by statute (*l*). Such a power, however, does not confer or imply a power to prohibit or prevent trade; for the latter power

(*c*) *Norris* v. *Staps* (1616), Hob. 210; *Bentham* v. *Hoyle* (1878), 3 Q. B. D. 289; *White* v. *Morley*, [1899] 2 Q. B. 34, *per* CHANNELL, J., at p. 39; *Gentel* v. *Rapps*, [1902] 1 K. B. 160, 166. It has been declared by statute that no masters, wardens and fellowships of crafts or mysteries, nor any rulers of guilds or fraternities, should take upon them to make or to execute any acts or ordinances by them theretofore made in disheritance or diminution of the prerogative of the Crown or of others, nor against the common profit of the people; but that the same acts or ordinances should be examined and approved by the Chancellor or the Chief Justice or the justices of assize in the circuit where the acts or ordinances were made, on pain of forfeiting £40 every time that they should do to the contrary (19 Hen. 7, c. 7). But the statute does not approve or confirm any of the bye-laws so made, but leaves them to be dealt with by the courts as occasion requires on their merits. All that the statute does is to relieve corporations from the penalty which they might otherwise incur in consequence of their putting into force any bye-law against the King's prerogative (*Ipswich Tailors' Case* (1614), 11 Co. Rep. 53 a, 54 b). In other words, the statute did not give validity to bye-laws not otherwise legal (*Kruse* v. *Johnson*, *supra*, *per* MATHEW, J., at p. 108).

(*d*) *White* v. *Morley*, *supra*; *Gentel* v. *Rapps*, *supra*.

(*e*) *Gentel* v. *Rapps*, *supra*, *per* CHANNELL, J., at p. 166.

(*f*) *Ibid.*; *White* v. *Morley*, *supra*.

(*g*) *Kruse* v. *Johnson*, *supra*, *per* MATHEW, J., at p. 108.

(*h*) *Collman* v. *Mills*, [1897] 1 Q. B. 396, *per* WILLS, J., at p. 399; *R.* v. *Saddlers' Co.* (1863), 10 H. L. Cas. 404, *per* Lord WENSLEYDALE, at p. 463; compare *Poulters' Co.* v. *Phillips* (1840), 6 Bing. (N. C.) 314; *London Tobacco Pipe Makers' Co.* v. *Woodroffe* (1828), 7 B. & C. 838.

(*i*) Com. Dig., tit. Bye-law, C, 7; *Colchester Corporation* v. *Goodwin* (1666), Cart. 114, 121; *Clarke* v. *Tucket* (1690), 2 Vent. 182; *R.* v. *Attwood* (1833), 4 B. & Ad. 481; *Elwood* v. *Bullock* (1844), 6 Q. B. 383. It is doubtful whether a bye-law which imposes a regulation (for instance the payment of a fee or penalty) in excess of a similar statutory regulation will be valid as to the excess unless expressly authorised by Act of Parliament (*Eagleton* v. *East India Co.* (1802), 3 Bos. & P. 55).

(*k*) *R.* v. *Lundie* (1861), 31 L. J. (M. C.) 157; *R.* v. *Faversham Fishermen* (1799), 8 Term Rep. 352; *R.* v. *Coopers' Co.*, *Newcastle* (1798), 7 Term Rep. 543, *per* LAWRENCE, J., at p. 549; *Clark* v. *Denton* (1830), 1 B. & Ad. 92, *per* BAYLEY, J., at p. 95.

(*l*) As, for instance, Employment of Children Act, 1903 (3 Edw. 7, c. 45), ss. 1, 2; Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 2 (ii.); Shop Hours Act, 1904 (4 Edw. 7, c. 31).

can only be conferred by express words (*m*). Bye-laws which cramp and harass trade are void (*n*).

Restraint of trade.

Formerly, in certain cities, towns and boroughs, customs or bye-laws existed restricting the carrying on of trade within the locality (*o*); but now, notwithstanding any such custom or bye-law, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery and handicraft for hire, gain, sale or otherwise within any borough (*p*).

SUB-SECT. 4.—*Penalties.*

Inflicting penalties.

764. A power to inflict penalties to enforce bye-laws is incidental to a corporation, without any special power being given (*q*). There can be no action for breach of a bye-law which inflicts no penalty therefor (*r*).

A corporation may, by means of a bye-law, inflict a penalty on any person guilty of a breach of it, if the offence be committed within the jurisdiction of the corporation, and the sum payable be competent and proportionable to the offence, and be otherwise in accordance with the law (*s*).

But the payment of a penalty thereunder cannot be directed to be made to a stranger to the corporation (*t*). Such payment must be made either to the corporate body itself, or to the proper officer of the corporation whose duty it is to receive such money, or to some other person or persons not strangers to the corporation, as, for instance, the master and wardens thereof in their official capacity (*u*).

Enforcement of penalty.

765. A bye-law may direct that a reasonable penalty may be enforced by distress or action for debt (*w*), but not without previous

(*m*) *Toronto* (*City*) *Municipal Corporation* v. *Virgo*, [1896] A. C. 88, P. C.; and see title LOCAL GOVERNMENT.

(*n*) *Mitchell* v. *Reynolds* (1712), 10 Mod. Rep. 130, 131; 1 Smith, L.C., 11th ed., 406, 407, 410; *R.* v. *Coopers' Co., Newcastle* (1798), 7 Term Rep. 543.

(*o*) *Bodwic* v. *Fennell* (1748), 1 Wils. 233; *Hesketh* v. *Braddock* (1766), 3 Burr. 1847; *Clark* v. *Le Cren* (1829), 9 B. & C. 52; *Shaw* v. *Poynter* (1834), 2 Ad. & El. 312.

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 247, re-enacting Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 14. It is surmised that the practical result of this enactment is to enable trade to be carried on without restraint over the whole of England except where restraint is expressly imposed by Act of Parliament; see title TRADE AND TRADE UNIONS.

The power to issue licences for the sale of intoxicating liquors, where granted by charter to a corporation, still remains (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 72; and compare *Roberts* v. *Twining* (1909), 25 T. L. R. 525).

(*q*) *London* (*City*) v. *Wood* (1701), 12 Mod. Rep. 669, 686.

(*r*) *Workingham Corporation* v. *Johnson* (1736), Lee *temp.* Hard. 284.

(*s*) *London's* (*Chamberlain*) *Case* (1590), 5 Co. Rep. 62 b, at p. 63 b.

(*t*) *Bodwic* v. *Fennell*, *supra*.

(*u*) *Graves* v. *Colby* (1838), 9 Ad. & El. 356, *per* Lord DENMAN, C.J., at p. 366, where it was held that where, under a bye-law, a penalty is payable "to the master and wardens for the time being, or to one of them, for the use, relief and maintenance" of the corporation, the right to sue upon such penalty will not remain in the particular persons who held the offices of master and wardens, after they have quitted office, even though they held office at the time the penalty was incurred.

(*w*) *Clark's Case* (1596), 11 Co. Rep. 64 a; but see *Butchers' Co.* v. *Bullock* (1803), 3 Bos. & P. 434.

SECT. 2. Regulations.

demand and refusal to pay (*x*). A corporation cannot make a bye-law to have a forfeiture levied by the sale of goods or for a forfeiture of goods (*y*), unless expressly empowered to do so by Act of Parliament (*z*).

Where a penalty is inflicted under a bye-law the ordinary legal method of recovering it must be resorted to if necessary. A bye-law declaring that, pending the payment of the penalty, the member who has incurred it shall be deprived of all participation in the profits or benefits of the corporation is void (*a*). A corporation cannot make a bye-law inflicting imprisonment as a penalty (*b*).

Where a bye-law is framed, not for the benefit of the corporation, but for the benefit of the public, the corporation cannot dispense with the enforcement of such a bye-law (*c*).

SUB-SECT. 5.—*Proof of Bye-laws.*

Evidence.

766. The books of a corporation are evidence of the existence of bye-laws registered therein, even as against strangers (*d*).

Where a corporation sues a person who is not a corporator upon a bye-law which affects persons within a particular district other than members of the corporation, it cannot refuse to allow him inspection of the bye-law on the plea that he is not a member of the corporation (*e*). But he will only be allowed inspection on payment of a reasonable sum for the attendance of the officer of the corporation to produce the books (*f*).

SUB-SECT. 6.—*Effect of Usage.*

Usage.

767. Where there is proof of very ancient usage in relation to the internal government of a corporation, the court will presume a bye-law, or any other legal origin, to support such usage (*g*).

(*x*) *Davies* v. *Morgan* (1831), 1 Cr. & J. 587.

(*y*) *Clarke* v. *Tucket* (1690), 2 Vent. 182.

(*z*) *Kirk* v. *Nowill* (1786), 1 Term Rep. 118.

(*a*) *Adley* v. *Reeves* (1813), 2 M. & S. 53. Possibly such a bye-law might have been good if supported by ancient usage.

(*b*) *Clark's Case* (1596), 11 Co. Rep. 64 a, where the prisoner had himself assented, as a member of the corporation, to the making of the bye-law.

(*c*) *Re an Arbitration between M'Intosh and Pontypridd Improvement Co.* (1891), 8 T. L. R. 128; followed and approved in *Yabbicom* v. *King*, [1899] 1 Q. B. 444.

(*d*) Grant, Law of Corporations (1850), p. 90. In the case of bye-laws under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), the production of a copy of the bye-law authenticated by the corporate seal is *primâ facie* evidence that the bye-law is in force, and has been duly made and published (*ibid.*, s. 24; *Robinson* v. *Gregory*, [1905] 1 K. B. 534). In the case of a bye-law under the Public Health Act, 1875 (38 & 39 Vict. c. 55), the production of a copy signed and certified by the clerk of the authority is sufficient (*ibid.*, s. 186); the signature and certifying are essential (*Drew* v. *Harlow* (1875), 39 J. P. 420).

(*e*) *Harrison* v. *Williams* (1824), 4 Dow. & Ry. (K. B.) 820.

(*f*) *Ibid.*, as reported 3 B. & C. 162.

(*g*) *R.* v. *Powell* (1854), 3 E. & B. 377, *per* COLERIDGE, J., at p. 389. In this case there was evidence of the usage for 400 years. As to usage regulating the election of members and officers, see pp. 350 *et seq.*, *post*. Thus, where the invariable usage of a corporation by prescription had been never to proceed to a corporate act except upon due notice being given for the purpose, an act done

Evidence.

Ancient usage and custom do not necessarily import immemoriality, but such considerable antiquity that the time during which it has prevailed may be evidence of its being reasonable (*h*). But usage will not be considered as evidence of a bye-law if it is contrary to the charter (*i*). Nor will evidence of usage in contravention of a bye-law be admitted (*k*). Declarations of deceased corporators are admissible in evidence to prove usage (*l*).

The question of the validity or invalidity of an alleged usage will be determined according to the same rules of law as are applicable to the case of bye-laws (*m*). Thus, a usage repugnant to or inconsistent with the constitution of a corporation cannot be valid (*n*).

SUB-SECT. 7.—*Statutory Regulations.*

Different modes of control.

768. Corporations are now usually controlled either by a special Act of Parliament or by a general Act applicable to a particular class of corporation. In some cases the Act of incorporation contains the whole of the regulations governing the body incorporated. In other cases the Act provides for the making of rules and regulations by bodies or persons outside the corporation (*o*). In a third class of cases the corporation itself is empowered to make its own rules, provided they conform to certain requirements (*p*).

SECT. 3.—*Meetings.*

SUB-SECT 1.—*Convention of Meetings.*

Necessity for notice.

769. A corporation can only do corporate acts at a corporate meeting, unless a special method is authorised by the constitution (*q*). A corporate meeting is not duly constituted unless it has been convened by the proper authority (*r*), and unless it is held upon notice which gives every member of the corporation an opportunity of attending (*s*).

without such notice was held to have been void (*Machell* v. *Nevinson* (1723), 2 Ld. Raym. 1355). As to usage generally, see title CUSTOMS AND USAGES.

(*h*) *R.* v. *York* (*Sheriffs*) (1832), 3 B. & Ad. 770, *per* Lord TENTERDEN, C. J., at p. 777. Usage for sixty years has been held sufficient evidence upon which the court might presume a bye-law (Grant, Law of Corporations (1850), p. 91). Uniform usage for forty years unopposed by evidence to the contrary is evidence of a prescriptive right, and implies a charter conferring such right (*R.* v. *Hoyte* (1795), 6 Term Rep. 430).

(*i*) *R.* v. *Tucker* (1727), 1 Barn. (K. B.) 26.

(*k*) *Sills* v. *Brown* (1840), 9 C. & P. 601, 604.

(*l*) *Davies* v. *Morgan* (1831), 1 Tyr. 457.

(*m*) See p. 336, *ante*.

(*n*) *R.* v. *Salway* (1829), 9 B. & C. 424, *per* Lord TENTERDEN, C.J., at p. 435.

(*o*) For an instance, see Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 14.

(*p*) See Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), ss. 7, 8, 9; Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 108, 109.

(*q*) *River Tone Conservators* v. *Ash* (1829), 10 B. & C. 349, 378; *R.* v. *Varlo* (1775), 1 Cowp. 248.

(*r*) *Re State of Wyoming Syndicate*, [1901] 2 Ch. 431; *Re Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230; *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 164. But it is competent for the proper authority to ratify an irregular summoning of a meeting (*Hooper* v. *Kerr, Stuart & Co., Ltd.*, (1900) 83 L. T. 729).

(*s*) *Merchants of the Staple of England* (*Mayor etc.*) v. *Bank of England*

SECT. 3. Meetings.

Where no specific day is fixed by the constitution and the object for which the meeting is required may be carried out at a meeting held at any time, it is essential that notice of the meeting and of the business to be transacted should be given to all persons entitled to participate (*t*). If a member, whom it is reasonably possible to summon, is omitted to be summoned, the meeting will not be duly convened (*u*), even though the omission be accidental (*w*), or due to the fact that the member omitted has informed the officer whose duty it is to serve notice that he need not serve notice on him (*x*). But a member who is out of reach need not be served with notice (*a*).

Where notice unnecessary.

770. Where a corporate meeting is fixed, either by charter or custom, to take place on a specific day, generally called the charter day, every person entitled to participate at the meeting will be deemed to have notice that there is to be a meeting on that day (*b*). Hence, it is unnecessary to give notice to the members of a corporation of the business intended to be brought forward on the charter day; for every member is then supposed to be present (*c*). But where corporate acts are to be done on a day other than the charter day, notice must be given to every member so far as practicable (*d*). A corporate meeting may be valid where notice of it has not been given, provided all the members of the corporation are present and consent to the meeting being held (*e*).

Select body.

Where a select body within a corporation is empowered to do certain acts for or on its behalf, such select body cannot act except upon special summons for the particular matter to be done (*f*). A general summons addressed to the whole body is not sufficient (*g*). Where, however, its function is merely to aid and assist the corporation as a whole when called upon to do so, it cannot refuse to attend merely because it has not had sufficient notice of the specific purpose of its attendance (*h*). Where all the members of a select body continue assembled together

(*Governor and Company*) (1887), 21 Q. B. D. 160, C. A., *per* WILLS, J., at p. 165.

(*t*) *R.* v. *Hill* (1825), 4 B. & C. 426,, *per* BAYLEY, J., at p. 441.

(*u*) *R.* v. *Shrewsbury Corporation* (1735), Lee *temp.* Hard. 147, 150; *Smyth* v. *Darley* (1849), 2 H. L. Cas. 789.

(*w*) *R.* v. *Langhorn* (1836), 4 Ad. & El. 538; see also *Godmanchester Corporation* v. *Phillips* (1836), 4 Ad. & El. 550.

(*x*) *R.* v. *Langhorn, supra.*

(*a*) *Nixon* v. *Burt* (1817), 7 Taunt. 681, *per* GIBBS, C.J., at p. 685. As to notice in the case of a deceased member, see *Allen* v. *Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 656, C. A.

(*b*) *R.* v. *Hill, supra, per* BAYLEY, J., at p. 441.

(*c*) *R.* v. *Harris* (1831), 1 B. & Ad. 936, *per* Lord TENTERDEN, C.J., at p. 943.

(*d*) *R.* v. *Langhorn, supra; R.* v. *Grimes* (1770), 5 Burr. 2598, 2601; *Nixon* v. *Burt, supra,* at p. 688; *R.* v. *May* (1770), 5 Burr. 2681; *R.* v. *Darlington School (Governors)* (1844), 6 Q. B. 682, Ex. Ch., *per* PARKE, B., at p. 707; *R.* v. *Shrewsbury Corporation, supra,* at p. 150; *Smyth* v. *Darley, supra.*

(*e*) *Musgrave* v. *Nevinson* (1723), 2 Ld. Raym. 1358, where the meeting was for an election.

(*f*) *R.* v. *Liverpool Corporation* (1759), 2 Burr. 723.

(*g*) *R.* v. *Carlisle Corporation* (1719), 1 Stra. 384.

(*h*) *R.* v. *Pulsford* (1828), 8 B. & C. 350.

after a meeting of the whole body, an act done by such select body so assembled will be valid, notwithstanding that no special summons for such assembly has been given (*i*). Similarly, where the power to elect is in an aggregate of select bodies and all the members of each select body are in fact present and agree that they will proceed to an election, such election will be good (*k*). Again, where there has been a long and undisputed usage, upon due warning to every member of the select body, to proceed to an election, although the special purpose of the meeting has not been previously intimated, it is probable that an election in such circumstances will be valid (*l*).

Method of giving notice.

771. Where there is a usual method of giving notice of a corporate meeting, that usual method cannot be dispensed with, nor can an act purported to be done at such meeting be good without complying with the usual requirements; unless all the persons who have a right to notice are actually summoned and unanimously agree (*m*). Notice, however, must be given in a reasonable manner and at a reasonable time before the meeting takes place (*n*).

It is probable that a notice that a meeting will be held only in certain events would be bad. The notice convening a meeting should state definitely that it will be held (*o*), and must contain a sufficient statement of the facts which will have to be considered by the corporators at the proposed meeting (*a*).

Where notice is given that particular business will be transacted at a meeting, no other business can be embarked upon at that meeting unless the whole body corporate is present and consents (*b*).

SUB-SECT. 2.—*The Quorum.*

Presence of quorum necessary.

772. The acts of a corporation, other than a trading corporation, are those of the major part of the corporators, corporately assembled. In other words, in the absence of special custom, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution contemplated (*c*).

(*i*) *R.* v. *Theodorick* (1807), 8 East, 543.

(*k*) *R.* v. *Chetwynd* (1828), 7 B. & C. 695.

(*l*) *Ibid.*, *per* Lord TENTERDEN, C.J., at p. 705.

(*m*) *R.* v. *May* (1770), 5 Burr. 2681, 2683.

(*n*) *R.* v. *Hill* (1825), 4 B. & C. 426, *per* BAYLEY, J., at p. 441, where it was held that the ringing of a bell was not a reasonable method of giving notice.

(*o*) *Alexander* v. *Simpson* (1889), 43 Ch. D. 139, C. A.; distinguished in *Tiessen* v. *Henderson*, [1899] 1 Ch. 861, and reluctantly accepted in *Re North of England Steamship Co.*, [1905] 2 Ch. 15, C. A. It is to be observed that all these cases were cases of companies registered under the Companies Act, 1862 (25 & 26 Vict. c. 89). See, however, *Re Espuela Land and Cattle Co.* (1900), 48 W. R. 684, where a notice summoning an extraordinary general meeting for the passing of a resolution to reduce capital and giving notice of a second meeting to confirm the resolution, if passed, went on to state that if the resolution should not be passed due notice would be given that the second meeting would not be held, and the notice was held to be a valid notice of the second meeting.

(*a*) *Peel* v. *London and North Western Rail. Co.*, [1907] 1 Ch. 5, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 14.

(*b*) *R.* v. *Wake* (1728), 1 Barn. (K. B.) 80; *Machell* v. *Nevinson* (1724), 11 East, 84, n.; *Re British Sugar Refining Co., Ex parte Faris* (1857), 26 L. J. (CH.) 369.

(*c*) *Merchants of the Staple of England* (*Mayor etc.*) v. *Bank of England* (*Governor and Company*) (1887), 21 Q. B. D., *per* WILLS, J., 160, C. A., at

SECT. 3. Meetings.

Where, therefore, a corporation consists of thirteen members, there ought to be at least seven present to form a valid meeting, and the act of the majority of these seven or greater number will bind the corporation (*d*). In considering whether the requisite number is present, only those members must be included who are competent to take part in the particular business before the meeting (*e*). The power of doing a corporate act may, however, be specially delegated to a particular number of members, in which case the method of procedure applicable to the body at large will be applied to the select body (*f*).

If a corporate act is to be done by a definite body alone, or by a definite body coupled with an indefinite body, a majority of the definite body must be present (*g*).

Where a corporation is composed of several select bodies, the general rule that a majority of each select body must be present at a corporate meeting will not be applied in the absence of express direction in the constitution, if such application would lead to an absurdity or an impossibility. Thus, where such a select body is composed of four members and two of them happen to vacate their offices at the same time, an election will be valid although only the remaining two are present at it (*h*).

Presence of the head.

773. Where a corporation aggregate has a head, no corporate act, other than the election of a new head, can be done without the presence of the head; and this is so although no provision be made for it by the charter (*i*). The act of the head and a majority of the members is the act of the corporation, and will be good though the others do not agree (*k*). So, when the chief office or head consists of more than one individual, no corporate act can be done unless the chief office is completely full (*l*).

Whenever any business is to be done by a particular part of a corporation only, the presence of the head is not necessary; but where it is required to be done by the whole corporation at large, the presence of the head is necessary (*m*).

p. 165. One person cannot constitute a meeting (*Sharp* v. *Dawes* (187 6), 2 Q. B. D. 26). As to trading companies generally, see title COMPANIES, Vol. V.

(*d*) *Hascard* (*Dr.*) v. *Somany* (*Dr.*) (1693), Freem. (K. B.) 504. Where by the charter it is provided that on a vacancy occurring among the members of a select body it should be lawful for the other members of that body "at that time surviving and remaining, or the greater part of the same," to elect another or others of the body to fill the office or offices so vacated as aforesaid, a majority of the entire select body must be present at such election in order to make it valid (*R.* v. *Wyllyams* (1823), 3 Dow. & Ry. (K. B.) 75; *R.* v. *Devonshire* (1823), 1 B. & C. 609).

(*e*) *Re Greymouth Point Elizabeth Rail. and Coal Co., Ltd., Yuill* v. *Greymouth Point Elizabeth Rail. and Coal Co., Ltd.*, [1904] 1 Ch. 32.

(*f*) *R.* v. *Varlo* (1775), 1 Cowp. 248.

(*g*) *R.* v. *Bower* (1823), 1 B. & C. 492.

(*h*) *R.* v. *Greet* (1828), 8 B. & C. 363.

(*i*) *R.* v. *Ipswich Bailiffs* (1705), 2 Ld. Raym. 1232, 1237.

(*k*) *Fernes' (Dean and Chapter) Case* (1607), Dav. Ir. 116, 130. As to the concurrence of the head, see p. 346, *post*.

(*l*) *R.* v. *Smart* (1768), 4 Burr. 2241. In this case the single chief office was composed not of a mayor, but of two bailiffs, and it was held that the office was not filled unless there were two bailiffs.

(*m*) *R.* v. *Duffin* (1733), 2 Barn. (K. B.) 370.

The members of a corporation in meeting assembled may always proceed in the absence of the head with any business begun when the head was present, though they cannot propose any new business in his absence (*n*). But where the presence of certain persons or bodies is required for the purpose of doing a corporate act, it does not follow that their consent to the doing of the act is therefore also necessary (*o*).

Absence of quorum.

774. Where a particular quorum is required by statute to be necessary for the performance of corporate acts, non-observance of the statutory requirement will be fatal to the validity of the act, as against strangers to the corporation (*p*). But where the quorum is fixed by the private regulations of the corporation, as, for instance, where it is fixed by the directors of a company under a power in its articles of association, an act apparently valid on the face of it will be good as against a stranger acting in good faith and without notice of any irregularity (*q*).

SUB-SECT. 3.—*Proceedings at Meetings.*

Powers of the majority present.

775. When a corporate assembly has once duly met, a corporate act may be done by the majority of those who have once regularly constituted the meeting (*r*), though the constitution contains no express provision on the subject (*s*). *Primâ facie* in all acts done by a corporation aggregate, the decision of the majority (*t*) binds the minority (*u*), and may be enforced against them by the court (*a*). But, in cases of fraud, the minority will be entitled to obtain relief on application to the court (*b*).

Where a charter requires that a corporate act should be done by a particular body or the major part of them, the major part of the

(*n*) *R.* v. *Norris* (1730), 1 Barn. (K. B.) 385.

(*o*) *Cotton* v. *Davies* (1716), 1 Stra. 53.

(*p*) *D'Arcy* v. *Tamar, Kit Hill and Callington Rail. Co.* (1867), L. R. 2 Exch. 158.

(*q*) *Gloucester County Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A.

(*r*) *R.* v. *Monday* (1777), 2 Cowp. 530, 538; *Cortis* v. *Kent Waterworks Co.* (1827), 7 B. & C. 316; *R.* v. *Kendall* (1841), 1 Q. B. 366; *Cook* v. *Loveland* (1799), 2 Bos. & P. 31; and compare *Macher* v. *Foundling Hospital* (1813), 1 Ves. & B. 188. As to the meaning of "corporate assembly," see p. 343, *ante*.

(*s*) *A.-G.* v. *Davy* (1741), 2 Atk. 212. Where by a charter twelve persons were incorporated for certain purposes, and, by a clause in the charter, any three members of that corporation were empowered to do certain other acts, it was held that the three persons constituted a corporation for the purpose of performing such acts, and accordingly that such acts were validly done by two of their number in spite of the opposition of the third (*ibid.*). It is presumed that nowadays this body would be held to be a select body within the larger corporation, and not a corporation itself.

(*t*) That is, a legal majority as distinguished from mere numerical majority (*Gosling* v. *Veley* (1847), 7 Q. B. 406, *per* Lord DENMAN, C.J., at pp. 436, 437); hence it appears that "legal majority" means a numerical majority of persons legally present and legally entitled to vote and voting for a legal object in a legal manner.

(*u*) *Hascard* (*Dr.*) v. *Somany* (*Dr.*) (1693), Freem. (K. B.) 504; *A.-G.* v. *Davy* (1741), 2 Atk. 212.

(*a*) *Exeter and Crediton Rail. Co.* v. *Buller* (1847), 5 Ry. & Can. Cas. 211.

(*b*) *Society of Practical Knowledge* v. *Abbott* (1840), 2 Beav. 559.

SECT. 3. Meetings.

whole number, not of those actually assembled, is intended (*c*). By ancient usage, however, an act may be validly done by a majority of those present at the meeting, irrespective of the proportion which they may bear to the whole body (*d*); and a corporation may have the right, either by express provision in its charter or by prescription, to do a corporate act by means of a majority of the members for the time being in existence as distinguished from a majority of the complete normal body (*e*).

Concurrence of the head.

776. Where the corporation consists of a head and an aggregate of members in addition, the head, though he must be present at the meeting, need not necessarily be one of the majority or concur in the decision of the majority, unless it is clear on the construction of the constitution that the concurrence of the head is necessary (*f*).

Restrictions on powers of majority.

777. A majority, however large, cannot bind a dissentient minority, however small, to do that which is not authorized by the constitution (*g*).

Where a meeting of a corporate body is assembled for the performance of a particular and legally necessary duty, the majority of that meeting cannot prevent the performance of that duty by voting or resolving that it shall not be done; and, if they take no part in doing it, the others may do it without them. A majority cannot, by voting, bind a minority to break the law; and a majority, so voting, has no more effect than if it were not present (*h*). Thus, where a corporation has been ordered by the court specifically to perform a certain act, and at the meeting necessary for that purpose the majority vote against the performance of the act, the votes so cast are thrown away, and those of the minority in favour of the act are sufficient authority for the application of the corporate seal to perfect its execution (*i*). The provisions in some ancient constitutions of deaneries, hospitals, colleges, and other corporations, by which a single dissentient member was enabled to frustrate a grant, lease or election made even by a majority of the corporation, have been made void by statute (*k*). But the statute does not apply to acts done by a select body as distinguished from the corporation itself, or to acts which are not corporate acts (*l*).

(*c*) *Anon.* (1731), 2 Barn. (K. B.) 74.

(*d*) *Hascard* (*Dr.*) v. *Somany* (*Dr.*) (1593), Freem. (K. B.) 504.

(*e*) *R.* v. *Hoyte* (1795), 6 Term Rep. 430.

(*f*) *Re Queens' College, Cambridge* (1828), 5 Russ. 64, not following *Re Clare Hall* (1788), reported 5 Russ. 73. Where an advowson is conveyed to a corporation consisting of a master and twelve poor brethren, the right to nominate to the living belongs to the majority of the entire body, including the master, but the latter need not be one of the majority (*R.* v. *Kendall* (1841), 1 Q. B. 366). The King, however, must consent to an Act of Parliament.

(*g*) *Simpson* v. *Denison* (1852), 10 Hare, 51, 55; *Pickering* v. *Stephenson* (1872), L. R. 14 Eq. 333, 340; *Burland* v. *Earle*, [1902] A. C. 83, P. C.

(*h*) *Gosling* v. *Veley* (1850), 12 Q. B. 328, 350, Ex. Ch.

(*i*) *Ibid.* As to the limitation of the powers of a corporation, see p. 359, *post*.

(*k*) 33 Hen. 8, c. 27 (1541-2).

(*l*) *New College, Oxford, Case* (1566), 2 Dyer, 247 a.

Rights of minority.

778. The majority must allow the minority to state their views and express themselves generally on the matter that is the subject of the meeting. On the other hand, the minority must not unreasonably obstruct the will of the majority, as, for instance, by discussing and talking about the matter in question beyond a reasonable time (*m*).

The minority have no right of action against the majority in respect of proceedings of which they do not approve, where the act complained of is an act which in substance the majority are entitled to do (*n*). The same principle applies where something has been done irregularly or illegally which the majority are entitled to do regularly or legally; for the majority can always set it right (*a*). The minority, however, may come to the court when the majority are abusing their powers and are depriving the minority of their rights (*b*).

Presiding officer.

779. Where by the constitution a certain officer has to preside at meetings, it is his duty, as presiding officer or chairman, to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is regularly before the meeting (*c*).

It is not, as a general rule, within the scope of the authority of the presiding officer or chairman of a meeting to stop the meeting at his own will and pleasure (*d*). He cannot declare the meeting dissolved. If he should decline to continue to preside over the meeting, the meeting itself can resolve to go on with the business for which it was convened and appoint a chairman to conduct the business in place of the chairman so refusing to act as presiding officer (*e*).

A corporate decision arrived at by or in consequence of a wrong ruling on the part of the presiding officer may be set aside by the court (*f*). But the constitution of the corporation may provide for his decision being final unless challenged in the manner therein specified (*g*). In this case his decision cannot be otherwise impeached except upon evidence of bad faith (*h*).

(*m*) *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469, C. A. It is to be inferred from this decision that in a proper case it is lawful for the presiding officer to put a motion before the meeting to the effect that the discussion of the question for which the meeting was convened be closed and that a vote upon that question be taken; compare *MacDougall* v. *Gardiner* (1875), 1 Ch. D. 13, C. A., *per* JAMES, L.J., at p. 23.

(*n*) *Lord* v. *Copper Miners* (*Governor and Company*) (1848), 2 Ph. 740.

(*a*) *Mozley* v. *Alston* (1847), 1 Ph. 790; *Foss* v. *Harbottle* (1843), 2 Hare, 461; *MacDougall* v. *Gardiner*, *supra*, *per* MELLISH, L.J., at p. 25.

(*b*) *MacDougall* v. *Gardiner*, *supra*; *Menier* v. *Hooper's Telegraph Works* (1874), 9 Ch. App. 350; *Burland* v. *Earle*, [1902] A. C. 83, P. C.

(*c*) *National Dwellings Society* v. *Sykes*, [1894] 3 Ch. 159.

(*d*) *Ibid.*

(*e*) *Ibid.*

(*f*) *Henderson* v. *Bank of Australasia* (1890), 45 Ch. D. 330, C. A.

(*g*) *Re Hadleigh Castle Gold Mines, Ltd.*, [1900] 2 Ch. 419.

(*h*) *Arnot* v. *United African Lands, Ltd.*, [1901] 1 Ch. 518, C. A.

SECT. 3. Meetings.

Resolution.

780. Where a corporator desires to put a resolution before a meeting for the purpose of obtaining a corporate decision on it, he must do so in clear and unambiguous terms; for otherwise the presiding officer may refuse to put it to the vote (*i*).

Amendment.

781. A particular resolution or question being before a corporate meeting, it is open to any corporator attending that meeting to move an amendment thereto, provided it is legitimate and germane to the matter for which the meeting was called; and the chairman or presiding officer is bound to accept and put such amendment before the meeting for decision (*k*). But this rule does not apply where the question before the meeting is simply the confirmation or rejection of some act which has been done but requires such confirmation or rejection (*l*).

Adjournment.

782 Where by the constitution certain business must be done on a particular day, the corporation has, of necessity, power to adjourn so as to conclude such business as it had begun but had not time to finish on the day fixed by the charter; and the business done on the day to which the adjournment is made will be as valid as though done on the day fixed by the charter (*m*).

Again, where it is not possible to transact the whole of the business for which a meeting has been called, there is a power, at common law, to adjourn such meeting for the purpose of completing such business (*n*); and the adjourned meeting is to be considered as a part of the original meeting (*o*).

It is unnecessary to give notice of an adjourned meeting (*p*); but no fresh business can be transacted at an adjourned meeting, unless special notice of an intention to transact such business at such adjourned meeting shall have been duly given (*q*).

SUB-SECT. 4.—*Voting.*

Mode of voting.

783. At common law votes at all meetings are taken by a show of hands followed, if necessary, by a poll (*r*); and, in the absence

(*i*) *Henderson* v. *Bank of Australasia* (1890), 45 Ch. D. 330, C. A., *per* FRY, L.J., at p. 347.

(*k*) *Ibid.*

(*l*) *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469, C. A., *per* CHITTY, L.J., at p. 483.

(*m*) *R.* v. *Carmarthen Corporation* (1813), 1 M. & S. 697.

(*n*) *Kerr* v. *Wilkie* (1860), 6 Jur. (N. S.) 383, H. L.

(*o*) *Scadding* v. *Lorant* (1851), 3 H. L. Cas. 418. Where a meeting was held at which votes were cast and a scrutiny demanded, and the presiding officer dismissed the electors "to meet again upon a fresh summons," and such a fresh summons was subsequently issued by a fresh presiding officer, and the scrutiny took place at the meeting convened by such summons, it was held that the first meeting was not dissolved but only adjourned (*R.* v. *London Corporation* (1829), 9 B. & C. 1).

(*p*) *Kerr* v. *Wilkie*, *supra.*

(*q*) *R.* v. *Grimshaw* (1847), 10 Q. B. 747, *per* COLERIDGE, J., at p. 756.

(*r*) *Anthony* v. *Seyer* (1789), 1 Hag. Con. 9, *per* Sir W. SCOTT, at p. 13. A poll appears to be the taking a vote by counting the polls or heads of the voters present and voting. As to the voting and proceedings generally at meetings of joint stock companies, see title COMPANIES, Vol. V.; and for proceedings of local authorities, see title LOCAL GOVERNMENT.

of any special provision to the contrary in the constitution of a particular corporation, the common law method must prevail (*a*). Voting by show of hands means counting the persons present who are entitled to vote and who choose to vote by holding up their hands (*b*).

Demand for poll.

784. Where a corporate vote is authorised by the constitution, bye-law, statute, or otherwise, to be taken in a particular manner, every corporator has at common law a right, immediately at the conclusion of the taking of such vote, to demand a poll unless such right is clearly taken away by statute (*c*) or special custom (*d*). The proper person to grant the poll is the presiding officer of the meeting at which it is demanded (*e*).

Effect of demand.

785. A poll is in the nature of an appeal by one of the contending parties dissatisfied with the decision of the chairman upon the show of hands (*f*). Where a poll is demanded the previous proceedings, so far as voting is concerned, become abandoned and a nullity. The real voting begins with the commencement of the poll (*g*).

Where a poll is legally demanded it may be taken then and there if the presiding officer or chairman in his discretion thinks fit (*h*), unless the constitution directs otherwise. Thus, where the articles of association of a company direct that all questions at general meetings are to be decided by a show of hands, unless a poll be demanded, in which case such poll is to be held at a time and place to be fixed by the directors within seven days from the date of the meeting, the taking of a poll then and there is a violation of the articles and illegal (*i*).

It seems that a member who was not present at the voting at the conclusion of which a poll was demanded is not precluded by such absence from attending and voting at the subsequent poll, which is a mere enlargement of the meeting at which it was demanded (*j*).

Casting vote.

786. Where the constitution does not provide for the event of there being an equality of votes at a corporate meeting, the omission must be made good by the creator of the constitution or other competent authority, not by the corporation; for unless

(*a*) *Re Horbury Bridge Coal, Iron and Waggon Co.* (1879), 11 Ch. D. 109, C. A., *per* JESSEL, M.R., at p. 115. It is, however, usual, for the sake of convenience, to make special rules as to the method of taking votes.

(*b*) *Ernest* v. *Loma Gold Mines, Ltd.*, [1897] 1 Ch. 1, C. A., *per* LINDLEY, L.J., at p. 6.

(*c*) *R.* v. *Wimbledon Local Board* (1882), 8 Q. B. D. 459, C. A.

(*d*) *Campbell* v. *Maund* (1836), 5 Ad. & El. 865, 880, Ex. Ch.

(*e*) *R.* v. *D'Oyly* (1840), 12 Ad. & El. 139, *per* Lord DENMAN, C.J., at p. 159.

(*f*) *Campbell* v. *Maund, supra, per* TINDAL, C.J., at p. 881.

(*g*) *Anthony* v. *Seger* (1789), 1 Hag. Con. 9, *per* Sir W. SCOTT, at p. 13.

(*h*) *Re Chillington Iron Co.* (1885), 29 Ch. D. 159, following *R.* v. *D'Oyly, supra.*

(*i*) *Re British Flax Producers Co., Ltd.* (1889), 60 L. T. 215.

(*j*) *R.* v. *Wimbledon Local Board, supra, per* BRETT, L.J., at pp. 462, 463; but see also a question by Lord ABINGER, C.B., and the reply to it in *Campbell* v. *Maund, supra*, at p. 874.

SECT. 3. Meetings.

expressly allowed by the constitution or long usage, the head or chief officer has no casting vote (*k*). In such a case a bye-law empowering the presiding officer to give a casting vote is bad as being contrary to the constitution (*l*).

Right to vote.

787. A mere right to be admitted a member of a corporation, however clear the right may be, gives a claimant to admission no right to vote at corporate meetings before actual admittance (*m*).

Where a corporator has cast a vote in a capacity to which he has no right, he cannot afterwards claim that the vote was cast in another capacity which he formerly had by right (*n*).

Proxies.

788. There is no common law right on the part of a member of a corporation to vote by proxy or substitute (*o*). The right of a corporator to vote by proxy depends upon the contract between himself and the rest of the corporators, and all the requirements of that contract as to the exercise of the right must be followed (*p*).

Where a corporator is by the constitution of the corporation entitled to vote at corporate meetings by proxy, although he himself is not present at the meeting when the vote is taken, if the vote is taken by a show of hands, the proxy by holding up his hand cannot count for more than one vote (*q*).

Although a proxy cannot be executed before it is stamped (*r*), yet, so long as it is properly stamped at execution, its operative parts, for example, the name of the proxy, or the date of the meeting at which the proxy is to be used, may be filled in afterwards by any person properly authorised to do so (*s*).

The cost of issuing, stamping, and posting forms of proxy to members of a corporation may be properly charged against the corporate funds, unless it can be shown that such issue was not honestly made in the interests of the corporation (*t*).

SUB-SECT. 5.—*Elections of Members and Officers.*

(1) *Power to Elect.*

Inherent power to elect members and officers.

789. A power to elect new members is incident to every corporation aggregate if no other mode of keeping up the succession is pointed out by the constitution (*a*); but where the corporation is composed of an indefinite number of members, it will not be compelled to elect members (*b*).

(*k*) *Anon.* (1773), Lofft, 315, *per* Lord MANSFIELD, C.J.
(*l*) *R.* v. *Ginever* (1796), 6 Term Rep. 732.
(*m*) *Askew's* (*Dr.*) *Case* (1768), 4 Burr. 2186, 2202.
(*n*) *R.* v. *Hughes* (1826), 5 B. & C. 886.
(*o*) *Harben* v. *Phillips* (1883), 23 Ch. D. 14, C. A., *per* BOWEN, L.J., at p. 35.
(*p*) *Ibid.*, *per* COTTON, L.J., at p. 32. See, further, title COMPANIES, Vol. V.
(*q*) *Ernest* v. *Loma Gold Mines, Ltd.*, [1897] 1 Ch. 1, C. A., *per* LINDLEY, L.J., at p. 7.
(*r*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 80. As to the cancellation of the stamp on a proxy, see *M'Mullen* v. *Hickman* (*Sir Alfred*) *Steamship Co., Ltd.* (1902), 71 L. J. (CH.) 766.
(*s*) *Ernest* v. *Loma Gold Mines, Ltd.*, *supra*; *Sadgrove* v. *Bryden*, [1907] 1 Ch. 318.
(*t*) *Peel* v. *London and North Western Rail. Co.*, [1907] 1 Ch. 5, C. A.
(*a*) *R.* v. *West Looe Corporation* (1825), 3 B. & C. 677, *per* BAYLEY, J., at p. 687.
(*b*) As, for instance, free burgesses (*R.* v. *Fowey Corporation* (1824), 2 B. & C. 584).

A corporation has a right to have all its offices filled. Where, therefore, a person is selected by a colourable election, it being known at the time that he cannot be sworn in or perform the duties of his office, it is a void election, and the person so selected has no estate in his office, and the court may order the office to be filled on the footing that it is vacant (*c*).

If a corporation is only authorised to elect to offices rendered vacant by death or disfranchisement, it cannot proceed to election except to fill a vacancy caused by one of those events (*d*).

(2) *Who may Elect.*

Right to take part in election.

790. One section of a corporation cannot be excluded by the rest from taking part in an election, and a bye-law attempting such exclusion will be bad (*e*). Nor can a qualification which is contrary to the constitution of a corporation be superadded by means of a bye-law to the right of an elector to vote at corporate elections (*f*). But usage or a bye-law restricting the number of electors will be good unless the restriction is unreasonable (*g*). Where by the ancient constitution of a corporation a certain class of persons is disqualified from voting at particular elections, and by a subsequent charter another class of persons is disqualified from voting at the same elections, the effect is, not to substitute a new disqualification for the old, but to create a new disqualification in addition to the old (*h*).

Quorum.

791. Where a corporation consists of a definite number of corporate electors, a majority of that number must be present in order to constitute a valid election (*i*). But where a corporation consists of an indefinite number of corporate electors, a majority only of those existing at the time of the election need be present (*k*).

When an election is to be made by a definite body only, or the electoral assembly is to consist of a definite and an indefinite body, the majority of the definite body must, as a general rule, be present in order to render the election legal (*l*). It is not necessary that a majority of the indefinite body should be present so long as

(*c*) *R.* v. *Cambridge Corporation* (1767), 4 Burr. 2008, 2010.
(*d*) *Page* v. *R.* (1792), 2 Ridg. Parl. Rep. 445, 503.
(*e*) *R.* v. *Cutbush* (1768), 4 Burr. 2204, 2208.
(*f*) *R.* v. *Spencer* (1766), 3 Burr. 1827, *per* WILMOT, J., at p. 1838.
(*g*) *R.* v. *Attwood* (1833), 1 Nev. & M. (K. B.) 286. The reason for this rule is explained by LITTLEDALE, J. (at p. 300), to be "because it tends to prevent disorder and confusion at elections." But see note (*i*), *infra*.
(*h*) *R.* v. *Abell* (1823), 3 Dow. & Ry. (K. B.) 390.
(*i*) *R.* v. *Bellringer* (1792), 4 Term Rep. 810, 822. The reason for this rule has been stated to be that otherwise, by allowing the number of electors to diminish, the power of election might ultimately get into the hands of three or four persons, which would be contrary to the spirit of the constitution, unreasonable, and even dangerous (*R.* v. *Devonshire* (1823), 1 B. & C. 609, 614; *R.* v. *Wyllyams* (1823), 3 Dow. & Ry. (K. B.) 75).
(*k*) *R.* v. *Bellringer*, *supra*, at p. 822.
(*l*) See *R. v. Ipswich Corporation* (1706), 2 Ld. Raym. 1232; *Cotton* v. *Davies* (1717), 1 Stra. 53.

SECT. 3. Meetings.

there is a majority of the definite body (*m*). If a constituent part of a corporation refuses to be present at an election, it cannot be held, and an election by the remaining parts will be void (*n*). But electors present at an election and abstaining from voting thereat are deemed to acquiesce in the election made by those who vote (*o*).

Where by the constitution an electoral body is to be composed of a definite number of persons, and after an election it is found that one of the supposed electors was not qualified to be an elector, the election is bad (*p*).

Delegation.

792. A corporation may, unless specially prohibited, make a bye-law enabling the whole body of members of the corporation to delegate the right of election of corporate officers or members to a committee of members; and it is immaterial whether the number of such officers or members be definite or indefinite (*q*).

Persons who are not members of a corporation may be authorised by the constitution to vote at elections to offices in the corporation (*a*).

(3) *The Election.*

Candidates.

793. A candidate for election to an office has a right to have the requirements of the constitution of the corporation completely fulfilled so far as concerns the electors (*b*).

Where the charter directs that the election of an officer shall be out of the body at large, a bye-law reducing the persons eligible to a select number will be good (*c*).

A person having a right to nominate a candidate for election does not necessarily lose his right to nominate by reason of his having to preside at the election (*d*).

(*m*) *R.* v. *Bower* (*Richard*) (1823), 2 Dow. & Ry. (K. B.) 761, 769.

(*n*) 1 Roll. Abr. 514.

(*o*) *R.* v. *Foxcroft* (1760), 2 Burr. 1017, 1021.

(*p*) *R.* v. *Bedford Corporation* (1721), 8 Mod. Rep. 35.

(*q*) *R.* v. *Westwood* (1830), 4 Bli. (N. S.) 213, H. L.; and see *Wilson* v. *Dennison* (1750), 1 Amb. 82, 85. In certain charters it was declared that the officers of the corporation should be chosen by the members generally, but by ancient usage the elections had been made by a select body. It was held that such usage was good, and must be presumed to have originated in some ancient ordinance and constitution (*Corporations Case* (1598), 4 Co. Rep. 77 b). So, where by the charter of incorporation the corporation was to elect annually four wardens from the members of the corporation, and for four hundred years it had been the custom for the wardens to be elected by a court of assistants, who were elected by the court of assistants itself from the members of the corporation at large, and the court of assistants had always elected wardens from members of the corporation at large, but usually, though not invariably, from such members as were also members of the court of assistants, it was held that a bye-law authorising such procedure would be good, that the electors were not self-elected, and that, if they had been, it would not have destroyed the representative character of the electoral body (*R.* v. *Powell* (1854), 3 E. & B. 377).

(*a*) *R.* v. *Dulwich College* (1851), 17 Q. B. 600, 628.

(*b*) *Grattan* v. *Lendrick* (1829), 2 Hud. & B. 409, *per* BURTON, J., at p. 422.

(*c*) *Barber* v. *Boulton* (1719), 1 Stra. 314. Although by a charter of Edward III. an election was to be by and out of the corporation at large, yet this may be restrained and regulated by usage to the choice by the corporation at large of one out of two candidates nominated by a select committee (*Butler* v. *Palmer* (1699), 1 Salk. 190).

(*d*) *R.* v. *Nance* (1740), 7 Mod. Rep. 337, 342.

A bye-law purporting to regulate the class of members from which an officer of the corporation may be elected is void if repugnant to the charter of incorporation (*e*) or if it restricts (*f*) or extends (*g*) the qualifications of candidates. So where the charter directs that certain officers are to be elected "out of the burgesses and inhabitants" a usage under which burgesses who are not inhabitants are declared to be eligible is bad (*h*).

Voting for unqualified persons.

794. A vote given for an unqualified candidate is presumed to have been given in ignorance of such disqualification until the contrary is shown by clear evidence (*i*); and the voter may vote again in favour of a duly qualified candidate (*j*). But votes knowingly cast for an unqualified candidate are thrown away (*k*).

Where out of several candidates for election to one office an unqualified person has received the most votes, his election is bad owing to his disqualification, and there must be a new election, because the person who received the next greatest number of votes at the election cannot be said to have been elected (*l*). But where several candidates are elected to fill more than one vacancy at the same time, and one of them is subsequently found to have been disqualified from being elected, the election is void as to him only, and not to the others (*m*).

Election obtained by fraud.

795. Where a candidate obtains election by means of fraud perpetrated by him before his election, his election may be avoided. But a fraud perpetrated after election, and in order to obtain admittance, will not avoid admittance, unless it be of such a nature that if discovered before election it would have resulted in the disqualification of the candidate. A mere untrue or even fraudulent statement made between election and admittance, which has no relation to circumstances which would have been a cause of disqualification before election, is not sufficient to avoid the admittance (*n*).

Time for election.

796. At common law a corporate election may be held at any time (*o*). Such a clause in a charter as that "within eight days after the death or removal" of an officer "the electors are to elect

(*e*) *Tucker* v. *R.* (1742), 2 Bro. Parl. Cas. 304.
(*f*) *R.* v. *Attwood* (1833), 1 Nev. & M. (K. B.) 286.
(*g*) *R.* v. *Bumstead* (1831), 2 B. & Ad. 699.
(*h*) *R.* v. *Salway* (1829), 4 Man. & Ry. (K. B.) 314, 332.
(*i*) *Anthony* v. *Seger* (1789), 1 Hag. Con. 9, *per* Sir W. SCOTT, at p. 12.
(*j*) *Gosling* v. *Veley* (1847), 7 Q. B. 406, 437.
(*k*) *R.* v. *Foxcroft* (1760), 2 Burr. 1017, 1021.
(*l*) *R.* v. *Bedford Corporation* (1721), 8 Mod. Rep. 35, 37.
(*m*) *Ibid.*, at p. 36. Where two persons stood as candidates for election to one office, and after two votes had been cast in favour of each, notice was given that one of the candidates was disqualified from being a candidate, but, the poll having proceeded to a conclusion, more votes were cast for the disqualified candidate than the other, and both were duly sworn in as having been duly elected, it was held that all votes cast for the disqualified candidate after notice of the disqualification were void, and that consequently the other candidate, having received a majority of legal votes and been sworn in, had been duly elected, and that the office had thereupon been legally filled up (*Hawkins* v. *R.* (1813), 2 Dow, 124, H. L.).
(*n*) *R.* v. *Saddlers' Co.* (1863), 10 H. L. Cas. 404, *per* Lord WENSLEYDALE, at p. 465.
(*o*) 1 Roll. Abr. 513, 514.

SECT. 3. Meetings.

another in his place" is directory only, and does not override the common law power (*p*). Similarly, as a general rule, a clause in an Act of Parliament stating a time for electing members of a corporation will be construed as directory only, and not as imperative (*q*). But where the charter fixes a particular day for the holding of elections to corporate offices, elections cannot be held on any other day (*r*), and, unless there is a special provision to that effect, cannot be adjourned (*s*).

Proceedings at election.

797. As a rule the proceedings at corporate elections are regulated by the constitution of the corporation, and where a corporation accepts a new charter which materially alters the ancient method of electing officers of the corporation, the old method will be entirely determined and superseded by the new (*t*).

Where the mode of election is not regulated either by the charter or by prescription, the corporation may formulate regulations, and this may be effected by usage or bye-laws (*u*). But a corporation cannot by means of a bye-law alter the constitutional method of election so as to alter the result or effect of an election, for to do so would be to alter the constitution itself (*a*).

There may be a usage that elections or rejections shall be by ballot (*b*).

Where there are several vacancies to be filled, or additional members to be elected, a list of candidates cannot be submitted to be voted upon collectively, but each candidate must be voted upon separately, or the election will be void (*c*). Where, however, the elected candidates are to form a board, the vote may be taken upon a list collectively provided that all members present have had the opportunity of submitting their own lists (*d*).

If an election is merely colourable, a mandamus may be obtained to hold a fresh election; for the first election is void (*e*). But where a candidate has been returned as elected by the proper returning officer, and has afterwards been admitted to the office, the court will not grant a mandamus for the purpose of trying the validity of the election; in such a case the proper remedy is by a *quo*

(*p*) 1 Roll. Abr. 513, 514.

(*q*) *R.* v. *Norwich Corporation* (1830), 1 B. & Ad. 310, *per* PARKE, J., at p. 317.

(*r*) *R.* v. *Tregony Corporation* (1723), 8 Mod. Rep. 127, where the court admitted that the result might be a dissolution of the corporation. But a municipal corporation is not dissolved by omission to hold an election within the appointed time (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 70 (2), and Sched. I., Part II., repealing as to corporations under the Act and replacing stat. 11 Geo. 1, c. 4, which was wholly repealed by Statute Law Revision Act, 1887 (50 & 51 Vict. c. 59)).

(*s*) *R.* v. *Pole* (1733), 7 Mod. Rep. 194.

(*t*) *Powell* v. *R.* (1728), 2 Bro. Parl. Cas. 298.

(*u*) *Newling* v. *Francis* (1789), 3 Term Rep. 189.

(*a*) *R.* v. *Bumstead* (1831), 2 B. & Ad. 699.

(*b*) *R.* v. *Dublin Corporation* (1826), Batt. 628.

(*c*) *R.* v. *Player* (1819), 2 B. & Ald. 707; *R.* v. *Monday* (1777), 2 Cowp. 530.

(*d*) *R.* v. *Brightwell* (1839), 10 Ad. & El. 171, 176; *R.* v. *Hedger* (1840), 12 Ad. & El. 139, 151, *per* Lord DENMAN, C.J., at p. 157.

(*e*) *R.* v. *Cambridge Corporation* (1767), 4 Burr. 2008, 2010; *R.* v. *Bankes* (1764), 3 Burr. 1452, 1454.

warranto information against the officer in possession (*f*). An election duly entered upon cannot be stopped (*g*); nor can it be proceeded with or declared in the absence of the presiding officer required by the constitution (*h*); but an election will not be rendered invalid by reason of the substitution of one presiding officer for another, or the dismissal of unnecessary poll-clerks (*i*).

Returning officer.

798. The returning officer at a corporate election has nothing but the ministerial duty to discharge of returning the candidate who has the actual majority of votes (*k*).

Validity of election.

799. An elected person is not bound to inquire into the qualification of an elector apparently entitled to vote (*l*). The right of a member to vote at an election cannot be tried upon an issue as to the validity of that election, but only upon proper proceedings in ouster against the member whose right is questioned (*m*).

An elector will not be allowed to impeach a title conferred by an election in which he has concurred, or the titles of those mediately or immediately derived from that election, unless he can prove that the ground upon which he bases his impeachment was unknown to him at the time of the election (*a*).

A corporation, or a select body within it, may have a right to try and determine the validity of an election to a corporate office within it without thereby ousting the jurisdiction of the ordinary courts of the realm (*b*).

SECT. 4.—*External Government or Visitation.*

Corporations subject to visitation.

800. Corporations constituted for public purposes or for trade are governed by the ordinary laws of the realm, and the court may examine into and adjudicate upon the validity of any private regulations or constitutions or the execution thereof by such a corporation (*c*). They are also subject to the control of various Government departments (*d*). But ecclesiastical and eleemosynary corporations, whether aggregate or sole, are usually subject to the control of a visitor or person specially appointed or constituted to inquire into and correct any irregularity which may arise in respect of such corporations (*e*), as, for instance, in cases of amotion (*f*),

(*f*) *R.* v. *Colchester Corporation* (1788), 2 Term Rep. 259.
(*g*) *R.* v. *Foxcroft* (1760), 2 Burr. 1017, 1020.
(*h*) *R.* v. *Williams* (1813), 2 M. & S. 141.
(*i*) *R.* v. *London Corporation* (1829), 9 B. & C. 1.
(*k*) *R.* v. *Ledgard* (1838), 3 Nev. & P. (K. B.) 513, *per* PATTESON, J., at p. 522.
(*l*) *Symmers* v. *R.* (1776), 2 Cowp. 503; *R.* v. *Hughes* (1825), 4 B. & C. 368.
(*m*) *Symmers* v. *R.*, *supra*, at p. 507.
(*a*) *R.* v. *Slythe* (1827), 6 B. & C. 240.
(*b*) *R.* v. *London Corporation*, *supra*.
(*c*) *Philips* v. *Bury* (1694), as reported 2 Term Rep. 346, 352; *R.* v. *Ely (Bishop)*, (1788) 2 Term Rep. 290, 335.
(*d*) Thus, local government corporations are subject to the Local Government Board; see title LOCAL GOVERNMENT; railway and trading companies to the Board of Trade; see titles RAILWAYS AND CANALS; COMPANIES, Vol. V.
(*e*) 1 Bl. Com. 479, 480. As to the visitatorial power over ecclesiastical corporations, see title ECCLESIASTICAL LAW; over universities and colleges, see title EDUCATION; and see generally also title CHARITIES, Vol. IV. pp. 287 *et seq.*
(*f*) *R.* v. *Chester* (*Dean and Chapter*) (1850), 15 Q. B. 513.

SECT. 4. External Government or Visitation.

and the ordinary courts will not inquire into the validity of the domestic laws and regulations laid down by the founder or other authority (*g*), though they have the power to determine whether the visitor has acted within the scope of his jurisdiction or not (*h*), and will prohibit the exercise of visitatorial powers by a person having no jurisdiction to exercise them (*i*).

Part V.—Powers and Liabilities.

SECT. 1.—*In General.*

General rule.

801. A corporation as a general rule and apart from the operation of general or special statutes has the same powers and is subject to the same liabilities as a natural person (*k*). When a corporation is duly created, all incidents thereto attach as of course. Thus, as a general rule, though there is no express power conferred to purchase land or to sue or be sued, yet the corporation may so purchase, or sue or be sued, as fully as though all these necessary incidents had been expressly given (*l*). Similarly, it may make leases and grants (*m*). The doctrine and ordinary rules relating to estoppel apply to corporations as much as to individuals (*n*). A corporation is entitled to claim the benefit of, and is barred by, the Statutes of Limitation as much as a private individual (*o*).

(*g*) *Philips* v. *Bury* (1694), as reported 2 Term Rep. 346, 352; *R.* v. *Ely* (*Bishop*) (1788), 2 Term Rep. 290, 335; *R.* v. *Chester* (*Dean and Chapter*) (1850), 15 Q. B. 513.

(*h*) *Grattan* v. *Lendrick* (1829), 2 Hud. & B. 409, *per* BURTON, J., at pp. 420, 422.

(*i*) *St. John's College, Cambridge* (*Master*) v. *Todington* (1757), 1 Burr. 158, *per* Lord MANSFIELD, at p. 193; *Whiston* v. *Rochester* (*Dean and Chapter*), *supra*, at p. 558.

(*k*) See the definitions of "corporation," p. 301, *ante*. As to the limitation of powers, see p. 359, *post*.

(*l*) 1 Roll. Abr. 513. Thus, an action for use and occupation of land may be maintained by a corporation aggregate, even though the permission to use and occupy was not given by deed (*Rochester* (*Dean and Chapter*) v. *Pierce* (1808), 1 Camp. 466; *Carmarthen Corporation* v. *Lewis* (1834), 6 C. & P. 608 (tolls)).

(*m*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 30 b.

(*n*) *R.* v. *Whitacre* (1706), Holt (K. B.), 445, 448; *Bank of Ireland* (*Governor and Company*) v. *Evans' Charities in Ireland* (*Trustees*) (1855), 5 H. L. Cas. 389.

(*o*) *South Sea Co.* v. *Wymondsell* (1732), 3 P. Wms. 143. Where by statute a time limit is established within which certain things are to be done, the fact that after the commencement of the statutory period a corporation sole (*e.g.*, a rectory) falls vacant will not suspend the operation of the statute (*Homfray* v. *Scroope* (1849), 13 Q. B. 509). No spiritual or eleemosynary corporation sole can make an entry or distress or bring an action or suit to recover any land or rent within such period as hereinafter is mentioned next after the time at which the right of such corporation sole, or of his predecessor, to make such entry or distress, or bring such action or suit, shall have first accrued, that is to say, the period during which two persons in succession shall have held the office or benefice in respect whereof such land or rent shall be claimed and six years after a third person shall have been appointed thereto, if the times of such two incumbencies and such term of six years taken together shall amount to the

Administration of estates of deceased person.

802. A corporation sole may take a grant of probate of a will (*p*); but where a corporation aggregate has been appointed executor of a will, the court will not grant probate thereof to the corporation, but will, on motion, grant letters of administration with the will annexed to the person who has at the time of the application been duly appointed under the corporate seal its syndic for the purpose of taking the grant (*q*). The court, however, will not make a grant to a corporation or its syndic unless either the corporation was appointed sole executor by the will, or all the other executors except the corporation have renounced probate; it will not make a grant to a corporation and another or others jointly (*r*).

How far corporation is a "person" within the meaning of various statutes.

803. The word "person" in a public statute as a general rule includes a person in law, that is, a corporation, as well as a natural person; and in every Act of Parliament passed on or after the 1st of January, 1890, the expression "person," unless the contrary intention appears, includes any body of persons corporate or unincorporate (*a*). But if a statute provides that no person shall do a particular act except on a particular condition, it is *primâ facie* natural and reasonable (unless there is something in the context, or in the manifest object of the statute, or in the nature of the subject-matter, to exclude that construction) to understand the Legislature as intending such persons as by the use of proper means may be able to fulfil the condition, and not those who, though called "persons" in law, have no capacity to do so at any time, by any means, or under any circumstances whatever (*b*).

full period of sixty years, and if such times taken together shall not amount to the full period of sixty years, then during such further number of years in addition to such six years as will, with the time of the holding of such two persons and six years, make up the full period of sixty years; and no such entry, distress, action, or suit shall be made or brought at any time beyond the determination of such period (Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 29). The above enactment extends to the case of lands vested in the Ecclesiastical Commissioners (*Ecclesiastical Commissioners of England and Wales* v. *Rowe* (1880), 5 App. Cas. 736), but not to the case where they become vested in a lay successor to a spiritual corporation (*Irish Land Commission* v. *Grant* (1884), 10 App. Cas. 14; *Conolly* v. *Gorman*, [1898] 1 I. R. 20, C. A.).

(*p*) *Re Haynes* (1842), 3 Curt. 75. By statute the public trustee may take probate or letters of administration of the estate of a deceased person either alone or jointly with others (Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 6).

(*q*) *Re Darke* (*Elizabeth*) (1859), 1 Sw. & Tr. 516, where the corporation was the Dean and Chapter of Exeter. Where a will appointed a limited company executors thereof, the court ordered that letters of administration with the will annexed should be granted to the general manager as the nominee of the company (*Re Hunt*, [1896] P. 288).

(*r*) *Re Martin* (1904), 90 L. T. 264; see, further, title EXECUTORS AND ADMINISTRATORS.

(*a*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), ss. 19, 42; see also R. S. C., Ord. 71, r. 1.

(*b*) *Pharmaceutical Society* v. *London and Provincial Supply Association* (1880), 5 App. Cas. 857, *per* Lord SELBORNE, L.C., at p. 862). A corporation may be, in one sense, included within the terms "person or persons" in an Act of Parliament. But the Act must be construed *secundum subjectam materiem*, and it must be ascertained whether it would be reasonable that the corporation should be within the words (*St. Leonard's, Shoreditch, Guardians* v. *Franklin* (1878), 3 C. P. D. 377, in which case it was held that a corporation aggregate cannot be a common informer, and therefore cannot sue for or recover penalties declared by a statute

SECT. 1. In General.

A corporation is not a "person" who can inform and sue for a penalty imposed by statute (*c*). Nor can it fill the office of treasurer of a friendly society (*d*), or act as a dentist (*e*), or be convicted as a rogue and vagabond for keeping a lottery (*f*).

Statutory and non-statutory corporations distinguished.

804. There is a difference between a statutory corporation and a corporation which is not statutory. The former has such rights and can do such acts only as are authorised directly or indirectly by the statute creating it (*g*); the latter, speaking generally, can do everything that an ordinary individual can do unless restricted directly or indirectly by statute (*h*).

Acts indirectly authorised are such things as may fairly be regarded as incidental to or consequential upon those things which are expressly authorised (*i*).

A corporation created for specific purposes by Act of Parliament has an incidental right to apply to Parliament for an extension or modification of its powers, and contracts entered into by it in furtherance of such application are *intra vires* the corporation, although not expressly or impliedly mentioned in the Act under which it takes its powers (*k*).

to be recoverable "by the person or persons who shall inform and sue for the same"); compare *Curtis* v. *Old Monkland Conservative Association*, [1906] A. C. 86, as to which see p. 377, *post*. For instances in which the word "person" has been held to include a corporation, see *Boyd* v. *Croydon Rail. Co.* (1838), 4 Bing. (N. C.) 669; *A.-G.* v. *Newcastle Corporation* (1842), 5 Beav. 307; *Hirst* v. *West Riding Union Banking Co., Ltd.*, [1901] 2 K. B. 560, C. A., following *Swift* v. *Jewsbury* (1874), L. R. 9 Q. B. 301, Ex. Ch.; and p. 391, *post*. Where an Act of Parliament incorporating the Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16), contained a provision that certain commissioners should "be elected by a majority of the votes of the persons present and entitled to vote at the respective meeting for the election, such votes to be given in writing under the hands of the respective voters, but a proxy not to be in any case admitted," the word "person" could not be construed to include a corporation, and consequently a corporation could not vote (*Wills* v. *Tozer* (1904), 20 T. L. R. 700). By s. 3 of the Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16), it was enacted that in that Act and the special Act the word "person" included a corporation, unless there was something in the subject or the context repugnant to such construction.

(*c*) *St. Leonard's, Shoreditch, Guardians* v. *Franklin* (1878), 3 C. P. D. 377.

(*d*) *Re West of England and South Wales District Bank, Ex parte Swansea Friendly Society* (1879), 11 Ch. D. 768 (decided on Friendly Societies Act, 1875 (38 & 39 Vict. c. 60)).

(*e*) *A.-G.* v. *Smith* (*George C.*), *Ltd.* (1909), 25 T. L. R. 257.

(*f*) *Hawke* v. *E. Hulton & Co., Ltd.*, [1909] 2 K. B. 93.

(*g*) *National Guaranteed Manure Co.* v. *Donald* (1859), 4 H. & N. 8; see p. 321, *ante*, and pp. 359 *et seq.*, *post*.

(*h*) *A.-G.* v. *Manchester Corporation*, [1906] 1 Ch. 643, *per* FARWELL, J., at p. 651.

(*i*) *Peel* v. *London and North Western Rail. Co.*, [1907] 1 Ch. 5, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 13, citing *A.-G.* v. *Great Eastern Rail. Co.* (1880), 5 App. Cas. 473, *per* SELBORNE, L.C., at p. 478. Where a statutory corporation is empowered by statute to construct works and levy rates to pay for the construction, there is an implication, unless it is clearly negatived by something in the statute to the contrary, that it is within the power of the corporation to levy a rate to provide for a liability incurred through the work being done negligently by its servants (*Gallsworthy* v. *Selby Dam Drainage Commissioners*, [1892] 1 Q. B. 348, C. A., *per* Lord ESHER, M.R., at p. 354).

(*k*) *Bateman* v. *Ashton-under-Lyne Corporation* (1858), 3 H. & N. 323.

SECT. 2.—*Limitation of Powers (Ultra Vires).*

SECT. 2. Limitation of Powers (Ultra Vires).

805. A corporation created by charter has at common law power to deal with its property and to incur liabilities in the same way as an ordinary individual (*l*).

Where a corporation is created by statute, its powers are limited and circumscribed by the statute creating it (*m*), and extend no further than is expressly stated therein (*n*), or is necessarily and properly required for carrying into effect the purposes of its incorporation (*o*). What the statute does not expressly or impliedly authorise is to be taken to be prohibited (*p*). If, for instance, the subject-matter of a contract is beyond the scope of the constitution of the corporation, it is *ultra vires* (*q*), that is, it is beyond the powers of the corporation to make the contract, which is therefore void *ab initio* and cannot be ratified (*r*). Nor can such a contract be made binding on the corporation by reason of the corporation consenting to judgment in an action brought against it upon the contract, though if the legality of the contract be one of the points substantially in dispute, it may be a fair subject of compromise (*s*). A corporation which is applying for a statute extending its powers may enter into a contract which is at present *ultra vires*, though authorised by the

Difference between common law and statutory corporations.

(*l*) *Wenlock (Baroness)* v. *River Dee Co.* (1887), 36 Ch. D. 674, *per* BOWEN, L.J., at p. 685; *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 30 b. If, however, it transgresses the limits fixed by its charter, it is liable to have the charter forfeited (*R.* v. *London Corporation* (1691), 1 Show. 274, *per* HOLT, C.J., at p. 280).

(*m*) *Ashbury Railway Carriage and Iron Co.* v. *Riche* (1875), L. R. 7 H. L. 653; *A.-G.* v. *Great Eastern Rail. Co.* (1880), 5 App. Cas. 473, *per* Lord BLACKBURN, at p. 481; *London County Council* v. *A.-G.*, [1902] A. C. 165, *per* Lord HALSBURY, L.C., at p. 167; see also *Wenlock (Baroness)* v. *River Dee Co.* (1885), 10 App. Cas. 354, *per* Lord WATSON, at p. 362, where it was also declared that the principles laid down in *Ashbury Railway Carriage and Iron Co.* v. *Riche*, *supra*, and *A.-G.* v. *Great Eastern Rail. Co.*, *supra*, apply to other corporations besides those created under the Companies Act, 1862 (25 & 26 Vict. c. 89), thereby overruling the view formerly expressed that the question of *ultra vires* depends not on the question whether the Act allows, but whether it expressly or impliedly forbids, the transaction alleged to be *ultra vires* (*Taylor* v. *Chichester and Midhurst Rail. Co.* (1867), L. R. 2 Exch. 356, Ex. Ch., *per* BLACKBURN, J., at p. 384; *Scottish North Eastern Rail. Co.* v. *Stewart* (1859), 3 Macq. 382, 415, H. L.; *Bateman* v. *Ashton-under-Lyne Corporation* (1858), 3 H. & N. 323; *South Wales Rail. Co.* v. *Redmond* (1861), 10 C. B. (N. S.) 675). See also *National Guaranteed Manure Co.* v. *Donald* (1859), 4 H. & N. 8; *Eastern Counties Rail. Co.* v. *Hawkes* (1855), 5 H. L. Cas. 331, 382; *Re Great Northern Rail. Co. and Great Central Rail. Co. (Joint Application)* (1908), 24 T. L. R. 417, C. A.; *A.-G.* v. *Great Northern Rail. Co.*, [1909] 1 Ch. 775, C. A.; *Coats* v. *Herefordshire County Council*, [1909] W. N. 129. As to *ultra vires*, see, further, title COMPANIES, Vol. V.

(*n*) *Wenlock (Baroness)* v. *River Dee Co.*, *supra*.

(*o*) *Colman* v. *Eastern Counties Rail. Co.* (1846), 10 Beav. 1, *per* Lord LANGDALE, M.R., at p. 14; *South Yorkshire Rail. and River Dun Co.* v. *Great Northern Rail. Co.* (1853), 9 Exch. 55, *per* PARKE, B., at p. 84; *Trowbridge Water Co.* v. *Wiltshire County Council* (1909), 53 Sol. Jo. 448; *Pearson (S.) & Son, Ltd.* v. *Dublin and South Eastern Rail. Co.*, [1909] A. C. 217, *per* Lord LOREBURN, L.C., at p. 220.

(*p*) See note (*m*), *supra*.

(*q*) The term *ultra vires* may mean, either beyond the powers of the directors or of the entire corporation (*Shrewsbury (Earl)* v. *North Staffordshire Rail. Co.* (1865), 35 L. J. (CH.) 156, 172. As to the powers of directors or other officers see p. 361, *post*.

(*r*) *Ashbury Railway Carriage and Iron Co.* v. *Riche*, *supra*, at p. 672; *Shrewsbury and Birmingham Rail. Co.* v. *London and North Western Rail. Co.* (1853), 4 De G. M. & G. 115.

(*s*) *Great North-West Central Rail.* v. *Charlebois*, [1899] A. C. 114 124, P. C.

SECT. 2. Limitation of Powers (Ultra Vires).

powers applied for, provided that the contract is made conditional on the powers being obtained, and provided that they are obtained (*t*). Such a corporation cannot bind itself by deed, though executed under its corporate seal, if it appears by the express provisions of the statute creating the corporation, or by necessary or reasonable inference from its enactment, that the deed is *ultra vires* (*u*). Nor can it be estopped by deed or otherwise from showing that it had no power to do that which it purports to have done (*w*). A corporation cannot grant a valid licence to do that which is beyond its own powers (*a*).

Where it is restricted by the statute as to its dealings with its property, the restriction is absolute, and cannot be modified or waived by the members of the corporation, even though they are all unanimously in favour of such modification or waiver (*b*). Thus, where it is authorised to raise money for a specific purpose, it cannot, even with the consent of all its members, apply that money for any other purpose (*c*).

Waiver of power.

806. A corporation on which powers have been conferred for the public good cannot contract that it will not use those powers (*d*).

Where, however, a corporation is merely empowered by the Legislature to do an act, it will not be compelled to do it, even though the act be for the public good and be partially completed (*e*).

But if it is clear that the Legislature intended that the whole work should be done, the court, at the instance of a member, will restrain the application of the corporate funds in the construction of a portion only (*f*).

Construction of general powers.

807. General words in the constitution of an incorporated body which, if construed literally, would virtually enable the corporation to carry on any business or undertaking of any kind whatever, will be construed as ancillary to the dominant or main objects for which the corporation was formed (*g*).

Special powers given either to directors or to a majority of a corporation by its constitution, whether statutory or otherwise, however

(*t*) *Taylor* v. *Chichester and Midhurst Rail. Co.* (*Directors*) (1870), L. R. 4 H. L. 628.

(*u*) *South Yorkshire Rail. and River Dun Co.* v. *Great Northern Rail. Co.* (1853), 9 Exch. 55, *per* PARKE, B., at p. 84, quoted with approval in *Shrewsbury and Birmingham Rail. Co.* (*Directors*) v. *North Western Rail. Co.* (*Directors*) (1857), 6 H. L. Cas. 113, *per* Lord CRANWORTH, L.C., at p. 137.

(*w*) *Re Companies Acts, Ex parte Watson* (1888), 21 Q. B. D. 301, *per* CAVE, J., at p. 302.

(*a*) *Preston Corporation* v. *Fulwood* (1885), 2 T. L. R. 134.

(*b*) *Wenlock* (*Baroness*) v. *River Dee Co.* (1883), 36 Ch. D. 675, n., C. A., affirmed (1885), 10 App. Cas. 354; *Mann* v. *Edinburgh Northern Tramways Co.*, [1893] A. C. 69.

(*c*) *Bayshaw* v. *Eastern Union Rail. Co.* (1849), 7 Hare, 114; *Colman* v. *Eastern Counties Rail. Co.* (1846), 10 Beav. 1; *Salomons* v. *Laing* (1850), 12 Beav. 339, 352; *East Anglian Rail. Co.* v. *Eastern Counties Rail. Co.* (1851), 11 C. B. 775.

(*d*) *Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623, 634; but see *A.-G.* v. *Hastings Corporation* (1902), 67 J. P. 165.

(*e*) *York and North Midland Rail. Co.* v. *R.* (1853), 1 E. & B. 858, Ex. Ch.; *Edinburgh, Perth and Dundee Rail. Co.* v. *Philip* (1857), 2 Macq. 514, H. L.; *R.* v. *Great Western Rail. Co.* (1893), 62 L. J. (Q. B.) 572, C. A. See, however, *contra*, *R.* v. *Eastern Counties Rail. Co.* (1839), 10 Ad. & El. 531.

(*f*) *Cohen* v. *Wilkinson* (1849), 18 L. J. (CH.) 378.

(*g*) *Re German Date Coffee Co.* (1882), 20 Ch. D. 169, 188, C. A.; *Stephens* v. *Mysore Reefs* (*Kangundy*) *Mining Co., Ltd.*, [1902] 1 Ch. 745; and see the comments on this case in *Pedlar* v. *Road Block Gold Mines of India, Ltd.*, [1905] 2 Ch. 427, *per* WARRINGTON, J., at p. 437.

absolute in terms, are always to be construed as subject to a paramount and inherent restriction that they are to be exercised in subjection to the special purposes of the original bond of association (*h*).

SECT. 2. Limitation of Powers (Ultra Vires).

808. Where a corporation is constituted by a public Act of Parliament, all persons and corporations are presumed to know the nature and extent of its powers (*i*). The same rule applies to companies whose articles and memoranda of association or trust deeds are registered in accordance with statutory requirements (*k*), and to incorporated building societies (*l*). Hence, if there is anything to be done which can only be done by the officers of such a corporation under certain limited powers, the person who deals with those officers must see that those limited powers are not being exceeded (*m*).

Notice of limitation of powers.

A person dealing in good faith with a corporation or its agents is not bound to see that the private internal regulations of the corporation are duly carried out (*n*), as for instance that the persons purporting to act as its directors have been duly appointed (*o*), or authorised (*a*), or that a proper quorum was formed on a particular occasion (*b*). But where the regulations are statutory, as for instance where directors of a company exercise powers under the Companies Clauses Consolidation Act, 1845 (*c*), it is prudent to ascertain that the statutory requirements have in fact been complied with (*d*).

Internal regulations.

809. A corporation has no general power to incur liability on bills of exchange or promissory notes (*e*), though it may draw cheques upon its current account at a bank (*f*). As regards bills of exchange and promissory notes, the power to incur liability depends

Bills of exchange etc.

(*h*) *Pickering* v. *Stephenson* (1872), L. R. 14 Eq. 322, *per* WICKENS, V.-C. at p. 340; and see p. 335, *ante*.

(*i*) *Macgregor* v. *Dover and Deal Rail. Co.* (1852), 18 Q. B. 618, Ex. Ch., *per* ALDERSON, B., at p. 631; *Balfour* v. *Ernest* (1859), 5 C. B. (N. S.) 601; *Gloucester County Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A.; *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93, C. A.

(*k*) *Ernest* v. *Nicholls* (1857), 6 H. L. Cas. 404, *per* Lord WENSLEYDALE, at p. 419; see title COMPANIES, Vol. V.

(*l*) *Chapleo* v. *Brunswick Building Society* (1881), 6 Q. B. D. 696, C. A., *per* BAGGALLAY, L.J., at pp. 712, 713; see title BUILDING SOCIETIES, Vol. III., p. 376.

(*m*) *Fountaine* v. *Carmarthen Rail. Co.* (1868), L. R. 5 Eq. 316, *per* PAGE WOOD, V.-C., at p. 322; *Premier Industrial Bank, Ltd.* v. *Carlton Manufacturing Co. and Crabtree, Ltd.*, [1909] 1 K. B. 106.

(*n*) *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327, Ex. Ch.; *Agar* v. *Athenæum Life Assurance Co.* (1857), 3 C. B. (N. S.) 725; *Norvell* v. *Worcester Corporation* (1854), 9 Exch. 457; *Bill* v. *Darenth Vale Rail. Co.* (1856), 1 H. & N. 305; *Re Land Credit Co. of Ireland* (1869), 4 Ch. App. 460.

(*o*) *Totterdell* v. *Fareham Blue Brick and Tile Co.* (1866), L. R. 1 C. P. 674; *Mahony* v. *East Holyford Mining Co.* (1875), L. R. 7 H. L. 869; *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314; *Re County Life Assurance Co.* (1870), 5 Ch. App. 288.

(*a*) *Biggerstaff* v. *Rowatt's Wharf, Ltd.*, *supra*.

(*b*) *Gloucester County Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, *supra*.

(*c*) 8 & 9 Vict. c. 16.

(*d*) *D'Arcy* v. *Tamar, Kit Hill and Callington Rail. Co.* (1867), L. R. 2 Exch. 158.

(*e*) Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 22 (1); *Re Peruvian Rail. Co., Peruvian Rail. Co.* v. *Thames and Mersey Marine Insurance Co.* (1867), 2 Ch. App. 617.

(*f*) *Serrell* v. *Derbyshire Rail. Co.* (1850), 9 C. B. 811; *Bateman* v. *Mid-Wales Rail. Co.* (1866), L. R. 1 C. P. 499, 506; and see title BANKERS AND BANKING, Vol. I., p. 588.

SECT. 2. Limitation of Powers (Ultra-Vires).

upon whether the corporation is a trading or a non-trading corporation (*g*). A non-trading corporation (*h*), though by its indorsement it may transfer the property in a bill or note (*i*), cannot incur liability thereon (*k*), unless the instrument creating it, expressly or by clear implication, confers the power (*l*). In the case of a trading corporation, the power need not be expressly conferred, where the nature of the business which it is authorised to carry on involves such a power (*m*).

Rights of holder etc.

Wherever a corporation is authorised to draw and accept bills of exchange, the holder has the same remedy against the corporation that he would have against a natural person who is a party to a bill (*n*); and where a promissory note, issued by a corporation, is apparently valid on the face of it, a holder, in due course, may sue the corporation upon it, though certain private formalities required by the constitution of the corporation have not been complied with, provided that the holder was not aware that the private formalities were requisite (*o*).

In such a case it is sufficient if the instrument is sealed with the corporate seal, though it is not necessary that it should be under seal (*p*). Where the instrument is signed by an agent on the corporation's behalf, the agent must be shown to have authority to do so (*q*). Thus, where a cheque is fraudulently and without authority signed by persons who usually sign cheques on behalf of a corporation, as, for instance, a railway company, the corporation will not be liable on the cheque (*r*).

Borrowing powers.

810. A non-trading corporation has no implied power to borrow money; and the question as to its powers in this connection must

(*g*) See title BILLS OF EXCHANGE ETC., Vol. II., p. 491.

(*h*) The following have been held not to be trading companies for this purpose: railway companies (*Bateman* v. *Mid-Wales Rail. Co.* (1866), L. R. 1 C. P. 499); water companies (*Broughton* v. *Manchester Waterworks Co.* (1819), 3 B. & Ald. 1); gas companies (*Bramah* v. *Roberts* (1837), 3 Bing. (N. C.) 963); mining companies (*Dickinson* v. *Valpy* (1829), 10 B. & C. 128; cemetery companies (*Harmer* v. *Steele* (1849), 4 Exch. 1, Ex. Ch.); salt and alkali companies (*Bult* v. *Morrell* (1840), 12 Ad. & El. 745); or salvage companies (*Thompson* v. *Universal Salvage Co.* (1848), 1 Exch. 694).

(*i*) Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 22 (2).

(*k*) See note (*e*), p. 361, *ante*.

(*l*) *Slark* v. *Highgate Archway Co.*, (1814), 5 Taunt. 792; *Murray* v. *East India Co.* (1821), 5 B. & Ald. 204.

(*m*) *Re Peruvian Rail. Co., Peruvian Rail. Co.* v. *Thames and Mersey Marine Insurance Co.* (1867), 2 Ch. App. 617; *East London Waterworks Co.* v. *Bailey* (1827), 4 Bing. 283, 288; *Re General Estates Co., Ex parte City Bank* (1868), 3 Ch. App. 758. See, further, titles BILLS OF EXCHANGE ETC., Vol. II., pp. 491, 492; COMPANIES, VOL. V.

(*n*) *Murray* v. *East India Co.*, *supra*, at pp. 204, 210.

(*o*) *Allen* v. *Sea Fire and Life Assurance Co.* (1850), 9 C. B. 574; *Re Land Credit Co. of Ireland* (1869), 4 Ch. App. 460.

(*p*) Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 91 (2). The same principle applies to instruments which do not fall within the Act (*Bechuanaland Exploration Co.* v. *London Trading Bank*, [1898] 2 Q. B. 658).

(*q*) *Re Peruvian Rail. Co., Peruvian Rail. Co.* v. *Thames and Mersey Marine Insurance Co.*, *supra*; compare *Premier Industrial Bank, Ltd.* v. *Carlton Manufacturing Co., Ltd. and Crabtree, Ltd.*, [1909] 1 K. B. 106, where it was held that the agent must have authority in fact, and that it is not sufficient for the constitution of the corporation to render it possible that authority might have been given; and see titles BILLS OF EXCHANGE ETC., Vol. II., pp. 491, 492; COMPANIES, Vol. V.

(*r*) *Serrell* v. *Derbyshire Rail. Co.* (1850), 9 C. B. 811.

SECT. 2. Limitation of Powers (Ultra Vires).

be determined by reference to its constitution (*a*). A person contemplating a borrowing transaction must satisfy himself by looking at the constitution of the corporation whether it has power to borrow or not, but he need not go further or inquire whether any private regulations or conditions have been complied with (*b*). A trading corporation, however, has an implied power to borrow money for the purposes of its business, even though the constitution contains no express power for that purpose (*c*).

Restrictions on borrowing.

The borrowing powers of a corporation may be restricted either by express terms or by necessary implication in its constitution (*d*). In such a case a person who lends in excess of the amount authorised does so at his own risk (*e*). Where a corporation is created by Act of Parliament which empowers it to borrow a certain sum of money, a restriction against borrowing more will be implied (*f*).

Persons dealing with a corporation having a limited power of borrowing are put upon inquiry whether that limit is being exceeded (*g*), but not as to how the money borrowed is to be applied (*h*).

Where the proceeds of a loan borrowed by a corporation in excess of its borrowing powers are applied in the payment of

(*a*) *R.* v. *Reed* (*Sir Charles*) (1880), 5 Q. B. D. 483; *A.-G.* v. *De Winton*, [1906] 2 Ch. 106.

(*b*) *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327, Ex. Ch.; *Gloucester County Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A.; *Re Hampshire Land Co.*, [1896] 2 Ch. 743; *Re Bank of Syria, Owen and Ashworth's Claim*, [1900] 2 Ch. 272; [1901] 1 Ch. 115, C. A.; *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314.

(*c*) *General Auction, Estate, and Monetary Co.* v. *Smith*, [1891] 3 Ch. 432. It has been held that a corporation may secure a loan by the following methods: mortgage of ships by a shipping company (*Australian Auxiliary Steam Clipper Co., Ltd.* v. *Mounsey* (1858), 4 K. & J. 733); deposit of deeds by a manufacturing company entitled to acquire and dispose of land (*Re Patent File Co., Ex parte Birmingham Banking Co.* (1870), 6 Ch. App. 83); bill of sale by a trading company (*Shears* v. *Jacob* (1866), L. R. 1 C. P. 513); overdraft on bankers by a building society (*Brooks & Co.* v. *Blackburn and District Benefit Building Society* (1884), 9 App. Cas. 857); mortgage of uncalled capital by a manufacturing company empowered to mortgage any of its property or rights (*Re Patent Ivory Manufacturing Co., Howard* v. *Patent Ivory Manufacturing Co.* (1888), 38 Ch. D. 156; *Re Pyle Works* (1890), 44 Ch. D. 534, C. A.). Where property is legally conveyed to a corporation as security for a loan, the property passes to the corporation notwithstanding that the corporation was forbidden by its constitution to advance a loan on that kind of property (*Ayers* v. *South Australian Banking Co.* (1871), L. R. 3 P. C. 348, 558); and see, further, title COMPANIES, Vol. V.).

(*d*) *Wenlock* (*Baroness*) v. *River Dee Co.* (1885), 10 App. Cas. 354, *per* Lord WATSON, at p. 362; and see also *Chapleo* v. *Brunswick Building Society* (1881), 6 Q. B. D. 696, C. A., a case of an unincorporated society, but it is presumed that the reasoning there applied would be equally applicable to the case of a corporation.

(*e*) *Irvine* v. *Union Bank of Australia* (1877), L. R. 4 Ind. App. 86, 99, P. C.

(*f*) *Wenlock* (*Baroness*) v. *River Dee Co.* (1887), 36 Ch. D. 674.

(*g*) *Chapleo* v. *Brunswick Building Society*, *supra*; and see *Re Companies Acts*, *Ex parte Watson* (1888), 21 Q. B. D. 301, *per* WILLS, J., at p. 305. As to the effect of an overdraft at a bank by a corporation, see title BANKERS AND BANKING, Vol. I., p. 630.

(*h*) *Re David Payne & Co., Ltd.*, *Young* v. *David Payne & Co., Ltd.*, [1904] 2 Ch. 608, C. A.

SECT. 2. Limitation of Powers (Ultra Vires).

legitimate creditors of the corporation, so that the liabilities of the corporation are not increased, but the creditors only are changed, the lender, as against the corporation, is entitled to step into the shoes of the creditors so paid off to the extent to which his money has been legitimately so applied (*i*); but he is not entitled to be subrogated to them, so as to have the benefit of any securities held by them (*k*).

Where an unincorporated society, having no power to borrow, obtains a loan and, after obtaining borrowing powers on subsequent incorporation, gives a security under the corporate seal for the original loan, the security subsequently given will be invalid equally with the original loan (*l*).

Amalgamation.

811. A corporation cannot, unless expressly authorised to do so, enter into any arrangement with another corporation or body which would substantially result in an amalgamation (*m*). It is, as a general rule, beyond the powers of one trading corporation to become a shareholder in another, or to apply its funds for that purpose, unless it is expressly authorised by its constitution to do so (*n*). But although a company may be authorised by its constitution to invest its funds in the purchase of shares in other companies, yet a transaction with another company which amounts to an entering into a new contract of partnership with new persons under a new constitution will be absolutely *ultra vires* and void unless specially provided for and authorised (*o*). And although it would be *ultra vires* for a banking company to buy, as a speculation, shares in another company, yet it may take a transfer into its own name of shares in another company held by it as security in the ordinary course of its business (*p*).

Action to restrain.

812. A corporation may be restrained by action (*q*) from doing an act which is beyond its powers (*r*). The action must, as a rule,

(*i*) *Wenlock (Baroness)* v. *River Dee Co.* (1887), 19 Q. B. D. 155, C. A.

(*k*) *Re National Permanent Benefit Building Society, Ex parte Williamson* (1870), 5 Ch. App. 309; *Re Wrexham, Mold and Connah's Quay Rail. Co.*, [1899] 1 Ch. 440, C. A., *per* LINDLEY, L.J., at p. 447; but see *Neath Building Society* v. *Luce* (1889), 43 Ch. D. 158, *per* CHITTY, J., at p. 164.

(*l*) *Re Companies Acts, Ex parte Watson* (1888), 21 Q. B. D. 301.

(*m*) *Greenwich Pier Co.* v. *Thames Conservators* (1905), 21 T. L. R. 669; *Re Great Northern Rail. Co. and Great Central Rail. Co. (Joint Application)* (1908), 24 T. L. R. 417, C. A.

(*n*) *Salomons* v. *Laing* (1850), 12 Beav. 339; *Re Barned's Banking Co., Ex parte Contract Corporation* (1867), 3 Ch. App. 105, *per* Lord CAIRNS, L.J., at p. 112; and see *Great Eastern Rail. Co.* v. *Turner* (1872), 8 Ch. App. 149, *per* Lord SELBORNE, L.C., at p. 152; and see p. 322, *ante*.

(*o*) *Re European Society Arbitration Acts, Ex parte Liquidators of the British Nation Life Assurance Association* (1878), 8 Ch. D. 679, 704, C. A.; and see *Joint Stock Discount Co.* v. *Brown* (1869), L. R. 8 Eq. 381.

(*p*) *Royal Bank of India's Case* (1869), 4 Ch. App. 252.

(*q*) Formerly called "information" (*A.-G.* v. *Shrewsbury Bridge Co.* (1880), 42 L. T. 79). As to such proceedings, see, further, title CROWN PRACTICE; and Yearly Practice of the Supreme Court, 1909, pp. 3, 4.

(*r*) For examples, see *A.-G.* v. *Manchester Corporation*, [1906] 1 Ch. 643 (municipal corporation engaging in business as carriers); *London County Council* v. *A.-G.*, [1902] A. C. 165 (*ultra vires* service of omnibuses); *A.-G.* v. *Mersey Rail.*, [1907] A. C. 415 (*ultra vires* service of omnibuses); *A.-G.* v. *De Winton*, [1906] 2 Ch. 106 (*ultra vires* borrowing); *A.-G.* v. *Wimbledon House Estate Co., Ltd.*, [1904] 2 Ch. 34 (erection of wall in contravention of statute); *A.-G.* v. *West Gloucestershire Water Co.*, [1909] 1 Ch. 636 (supply of water outside statutory limits).

be brought in the name of the Attorney-General (*s*), on the relation of a relator, who is added for the purpose of being liable for costs (*t*), though the relator, if entitled to it, may claim relief in his own right (*u*). He cannot, however, claim relief inconsistent with that claimed by the Attorney-General (*w*).

Where the act of the corporation specially affects the right of an individual, he may bring the action in his own name (*x*); and, if it should subsequently appear that the Attorney-General is a necessary party, he may then, with his consent, be added (*a*).

Where the officers or directors of a corporation or company actively participate in an act which it is beyond the powers of the corporation to perform, they are each, to the extent of his participation, liable personally for the consequences (*b*).

SECT. 3.—*Ownership of Property.*

SUB-SECT. 1.—*In General.*

Nature of ownership.

813. A corporation is capable of owning property (*c*); but endowment is not essential to the legal existence of a corporation, however necessary it may be from a practical point of view (*d*). Where a corporation possesses property, the individual members of the corporation are not legally owners of such property; although they are in a sense interested therein, since they may derive individual benefit from its increase, or loss from its destruction (*e*).

Hence they cannot do as they please with the property of the corporation, but are bound by the constitution of the corporation to which they belong (*f*). The corporation, however, may use its

(*s*) *Stockport District Waterworks Co.* v. *Manchester Corporation* (1862), 9 Jur. (N. S.) 266; *Watson* v. *Hythe Corporation* (1906), 22 T. L. R. 245; *A.-G.* v. *London and North Western Rail. Co.*, [1900] 1 Q. B. 78, C. A.

(*t*) *A.-G.* v. *Scott*, [1905] 2 K. B. 160, C. A.; *A.-G.* v. *Garner*, [1907] 2 K. B. 480, 485.

(*u*) *A.-G.* v. *Barker* (1900), 83 L. T. 245.

(*w*) *A.-G.* v. *Durham* (*Earl*) (1882), 46 L. T. 16.

(*x*) *Prestney* v. *Colchester Corporation and A.-G.* (1882), 21 Ch. D. 111; *Clinch* v. *Financial Corporation* (1868), 4 Ch. App. 117; *Rendall* v. *Crystal Palace Co.* (1858), 4 K. & J. 326; *Pickering* v. *Stephenson* (1872), L. R. 14 Eq. 322; *Bagshaw* v. *Eastern Union Rail. Co.* (1849), 7 Hare, 114. As to proceedings by members against the corporation, see further, p. 394, *post*.

(*a*) *Caldwell* v. *Pagham Harbour Reclamation Co.* (1876), 2 Ch. D. 221; *A.-G.* v. *Pontypridd Waterworks Co.*, [1908] 1 Ch. 388.

(*b*) *Young* v. *Naval, Military and Civil Service Co-operative Society of South Africa, Ltd.*, [1905] 1 K. B. 687, following *Cullerne* v. *London and Suburban General Permanent Building Society* (1890), 25 Q. B. D. 485, C. A. As to the liability of directors, etc., on signed bills of exchange, see title BILLS OF EXCHANGE ETC., Vol. II., p. 492.

(*c*) See the cases cited throughout this section.

(*d*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 31 a, 32 b; but see *ibid.* at p. 28 a.

(*e*) *R.* v. *Arnaud* (1846), 9 Q. B. 806, 817, 818.

(*f*) *Society of Practical Knowledge* v. *Abbot* (1840), 2 Beav. 559, *per* Lord LANGDALE, M.R., at p. 568. Where by a charter certain customs and tolls had been granted to a corporation, with a proviso that the moneys arising therefrom should be expended on certain purposes therein stated, the corporation was held to be bound to expend those moneys on those purposes exclusively, and to be

SECT. 3. Ownership of Property.

funds for the purpose of resisting any attack upon its existence, property, rights or privileges (*g*), or for defending (*h*) or indemnifying (*i*) its servants.

Trust ownership.

814. As a general rule a corporation, aggregate (*k*) or sole (*l*), may hold property upon trusts which have no connection or relation to the purposes for which the corporation exists, either alone or jointly with one or more individuals (*m*). It may be a trustee in its corporate capacity for a charitable purpose (*n*). There is, however, no absolute presumption that a legacy given to a corporation upon trust is given to it as trustee for a charity rather than a private individual (*o*).

Where the property of a corporation is affected by a trust the court has jurisdiction to deal with it, whether the corporation be lay or ecclesiastical (*p*); and the corporation will be treated by the

unable to appropriate the surplus to its own use (*A.-G.* v. *Galway Corporation*, (1829), Beat. 298). Where lands were vested by Act of Parliament in a trading corporation for the use of a certain navigation, "but to or for no other use or purpose whatsoever," it was held that the corporation could not lawfully let out pleasure boats for hire on a reservoir constructed on such lands—firstly, because the lands taken for the reservoir were vested in the corporation for the use of the navigation and for no other use or purpose whatsoever; and, secondly, because it involved a disposition of the corporate funds to purposes foreign to those for which the body was incorporated, and which might be prejudicial to the interests of the public and of the individual shareholders of the corporation (*Bostock* v. *North Staffordshire Rail. Co.* (1855), 4 E. & B. 798, *per* WIGHTMAN, J., at p. 829).

(*g*) *A.-G.* v. *Brecon Corporation* (1878), 10 Ch. D. 204.

(*h*) *Breay* v. *Royal British Nurses' Association*, [1897] 2 Ch. 272, C. A., where an agent of a corporation was sued for libel in respect of a statement printed and published by him on the instructions of the corporation.

(*i*) *Peel* v. *London and North Western Rail. Co.*, [1907] 1 Ch. 5, C. A., *per* BUCKLEY, L.J., at p. 21.

(*k*) *A.-G.* v. *Drapers' Co.* (1843), 6 Beav. 382; see p. 373, *post*.

(*l*) *Tufnell* v. *Constable* (1838), 7 Ad. & El. 798.

(*m*) Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20); *Re Thompson's Settlement Trusts, Thompson* v. *Alexander*, [1905] 1 Ch. 229. But a corporation cannot, according to the present practice, take probate of a will jointly with one or more other persons (*Re Martin* (1904), 90 L. T. 264; and see p. 357, *ante*).

(*n*) *Dummer* v. *Chippenham Corporation* (1807), 14 Ves. 245, 252; and see title CHARITIES, Vol. IV., p. 255 *et seq.* The court will not presume that a corporation has held certain property in trust for a charity merely because for the last ninety years the rents of it have been applied for the same charitable purpose (*Gozna* v. *Grantham Corporation* (1827), 3 Russ. 261). Where a corporation constituted itself trustee of property belonging to a charity, it was ordered to account for the rents and profits of the charity estate for a period of 200 years (*A.-G.* v. *Exeter Corporation* (1822), 1 Jac. 443). A corporation, prior to the surrender of its charter in 1684, granted a lease of its lands for 1,000 years to trustees upon trust, amongst other things, to apply the rents and profits for the benefit of a charity. A new charter was granted but afterwards abandoned, and the corporation was ultimately restored to its former rights and privileges. The court held that the charity was still entitled to the benefit of the annual income of the property, because the long usage, not rebutted by evidence to the contrary, showed that the charity had a claim before the lease was granted (*A.-G.* v. *Gower* (*Lord*) (1740), 9 Mod. Rep. 224).

(*o*) *Gloucester Corporation* v. *Wood* (1843), 3 Hare, 131, where a legacy was given to a corporation for certain purposes of the nature of which there was no evidence, with the result that the gift failed.

(*p*) *A.-G.* v. *St. John's Hospital, Bedford* (1865), 2 De G. J. & Sm. 621, C A.

court as a natural person (*q*). It will not be allowed to exercise a power or execute a trust corruptly (*a*).

Breach of trust.

When an account of trust property is taken by the court against a corporation in a case where the corporation has committed a breach of trust, the court will be disposed to put as lenient a construction as possible upon the act of the corporation; but, a corporation being one and the same body for all time, it will be no defence to plead that the members who composed the corporation when the breach of trust was committed have long ceased to exist (*b*).

Where a judgment has been obtained against a corporation for breach of trust the court will not charge the loss (if any) against the property generally of the corporation, or make an order the effect of which would be to subject all the corporate property to minute scrutiny and examination, but will leave the plaintiff to his remedy by the usual process in such cases (*c*).

SUB-SECT. 2.—*Mortmain.*

Assurances to corporation.

815. Although at common law a corporation aggregate or sole may acquire and hold land like a natural person (*d*), yet by statute (*e*) land (*f*) cannot be assured (*g*) to or for the benefit of, or be acquired by or on behalf of, any corporation, whether sole (*h*) or aggregate, in mortmain, otherwise than under the authority of a licence from the Crown or of a statute (*i*) for the time being in

(*q*) *A.-G.* v. *Foundling Hospital Governors* (1793), 2 Ves. 42, 46.

(*a*) *Dummer* v. *Chippenham Corporation* (1807), 14 Ves. 245, 252.

(*b*) *A.-G.* v. *Newbury Corporation* (1834), 3 My. & K. 647.

(*c*) *A.-G.* v. *East Retford Corporation* (1838), 3 My. & Cr. 484.

(*d*) Grant, Law of Corporations, pp. 98, 626.

(*e*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), which amended and consolidated the law on the subject; see, further, title CHARITIES, Vol. IV., pp. 124 *et seq.*

(*f*) "Land" includes, for this purpose, tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land (Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), s. 3). It does not include proceeds of sale of land held on trust for sale (*Re Wilkinson, Esam* v. *A.-G.*, [1902] 1 Ch. p. 841.)

(*g*) "Assurance," for this purpose, includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, codicil, or other instrument (Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 10 (i.), (ii.). Formerly it was held that leases for long terms, as 100 or 200 years, were alienations in mortmain, but not leases for 20, 40, or even 99 years (see Y. B. 3 Edw. 4, fol. 13, 14; Y. B. 4 Hen. 6, fol. 9, pl. 1; Bro. Abr. tit. Mortmain, pl. 27, 39; Vin. Abr. tit. Mortmain (B), pl. 21; *Cotton's Case* (1612), Godb. 191, 192; *Hemming* v. *Brabason* (1660), O. Bridg. 1, 7; *Jesus College, Oxford* v. *Gibbs* (1835), 1 Y. & C. (EX.) 145). In *Vigers* v. *St. Paul's (Dean etc.)* (1849), 18 L. J. (Q. B.) 97, it was considered that the mortmain restrictions were aimed only at preventing corporations holding that which was perpetual. These authorities, however, were all earlier than the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42). In *Truro Corporation* v. *Rowe*, [1902] 2 K. B. 709, C. A., the point that "assurance" includes "lease" was not brought before the notice of the court, and it was there held that the Statutes of Mortmain had nothing to do with short leases, a decision which, though applicable to the old Mortmain Statutes cannot be supported in connection with the Act of 1888.

(*h*) *Power* v. *Banks*, [1901] 2 Ch. 487, *per* COZENS-HARDY, J., at p. 495.

(*i*) For instances where corporations are expressly authorised by statute

SECT. 3. Ownership of Property.

force, and if any land is so assured without such authority the land is forfeited to the Crown from the date of the assurance, and the Crown may enter on and hold the land accordingly (*k*).

Grants, however, to corporations by remaindermen (*l*) or in remainder (*m*) are not subject to forfeiture until the remainder falls into possession.

Exceptions to Mortmain Acts.

816. The foregoing provisions as to assurances in mortmain (*n*) do not apply to assurances by deed of land of any quantity, or to assurances by will of land for the purposes only of a public park (*o*) when the land devised must not exceed twenty acres for any one park (*p*), of a schoolhouse for an elementary school when no limit is placed on the amount of land (*q*), or of a public museum (*r*) when the land devised must not exceed two acres (*s*), or to an assurance by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only (*t*), or to an assurance by deed of land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land (*a*). But a will containing such an

to hold land without licence in mortmain, see title CHARITIES, Vol. IV., pp. 137 *et seq.*

(*k*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 1 (1). If the land be held directly of a mesne lord under the Crown, that mesne lord may enter on and hold the land at any time within twelve months from the date of the assurance (*ibid.*, s. 1 (2) (i.); see *Lester* v. *Garland* (1808), 15 Ves. 248, 254); and if the land is held of more than one mesne lord in gradation under the Crown, the superior of those mesne lords may enter on and hold the land at any time within six months after the time at which the right of the inferior lord to enter on the land expires (*ibid.*, s. 1 (2) (ii.)). If a mesne lord is at the time when the right of entry above mentioned accrues a lunatic or otherwise under incapacity, his right of entry may be exercised by his guardian or the committee of his estate, or by such person as the High Court of Justice may appoint in that behalf (*ibid.*, s. 1 (2) (iii.)). If the right of entry above mentioned is exercised by or on behalf of a mesne lord, the land is forfeited to that lord from the date of the assurance instead of to the Crown (*ibid.*, s. 1 (2) (iv.)). A mesne lord cannot enter in right of his seignory unless he can prove a grant to his predecessors in title before the Statute of "Quia Emptores" (18 Edw. 1, c. 1 (1290)), which abolished the creation of tenures in fee simple. In practice entries by mesne lords are rare (see *Passingham* v. *Pitty* (1855), 17 C. B. 299; *Warrick* v. *Queen's College, Oxford* (1871), 6 Ch. App. 716). As to the law of mortmain generally, see title REAL PROPERTY AND CHATTELS REAL.

(*l*) Vin. Abr. tit. Mortmain, C, 3, pl. 4; Shelford, Law of Mortmain (1836), p. 10.

(*m*) Vin. Abr. tit. Mortmain B, pl. 19; C, 3, pl. 6. As to ecclesiastical corporations sole, see title ECCLESIASTICAL LAW.

(*n*) That is to say, the provisions of the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42).

(*o*) Including any park, garden, or other land dedicated or to be dedicated to the recreation of the public (*ibid.* s. 6 (4) (i.)).

(*p*) *Ibid.*, s. 6 (3).

(*q*) Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (5).

(*r*) For the definition of "museum," see Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 6 (4) (iv.).

(*s*) *Ibid.*, s. 6 (3).

(*t*) *Ibid.*, s. 6 (1).

(*a*) Mortmain and Charitable Uses Act Amendment Act, 1892 (55 Vict. c. 11), s. 1. By s. 2 of this Act "local authority" is declared to mean any county council, council of a municipal borough, sanitary authority, or any body having power to make a rate for public purposes, or by the issue of any precept,

assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assuror, and must be enrolled in the books of the Charity Commissioners within six months after, in the case of a will, the death of the testator, or, in the case of a deed, the execution of the deed (*b*).

Effect of alienation in mortmain.

817. An alienation in mortmain does not vest the estate in the Crown or the mesne lord (*c*). It gives them a right to enter, but to complete their title entry is essential (*d*), and until entry the corporation may retain the land.

The Crown may not enter before office found (*e*). The inquiry whether lands have been aliened in mortmain is directed by commission under the Great Seal addressed to special commissioners, who are empowered to summon and examine witnesses, and with a jury to take an inquisition, which is to be returned into the Chancery Division of the High Court of Justice (*f*). A subject has, with the leave of the court (*g*), a general right to traverse every inquisition finding property to be in the Crown (*h*).

If the Crown fails to enter, the title of the corporation will be valid as against the Crown after sixty years (*i*), the period running from the date of office found (*k*).

No entry or holding by or forfeiture to the Crown under the Act will merge or extinguish or otherwise affect any rent or service which may be due in respect of any land to the Crown or any other lord thereof (*l*).

Licence in mortmain.

818. The Crown, if and when and in such form as it shall think fit, may grant to any person or corporation a licence to assure in mortmain land in perpetuity or otherwise, and may grant to any corporation a licence to acquire land in mortmain and to hold the land in perpetuity or otherwise (*m*). A licence in mortmain is

certificate or other document to require payment from some authority or officer of money which may render necessary the making of any such rate.

(*b*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 6 (2). This sub-section does not apply to assurances made by deed to a local authority for purposes for which it is empowered by statute to acquire land (see Mortmain and Charitable Uses Act Amendment Act, 1892 (55 Vict. c. 11), s. 1).

(*c*) *Doe d. Evans* v. *Evans* (1826), 5 B. & C. 584, 587, n. (e).

(*d*) Co. Litt. 345 b; Vin. Abr. tit. Right, 231, pl. 7. In the case of the alienation of an advowson in mortmain, presentation is regarded as equivalent to entry (Vin. Abr. tit. Presentation, 422, pl. 11; 338, pl. 23; 392, pl. 3.

(*e*) Shelford, Law of Mortmain (1836), p. 10; and see *Doe d. Hayne* v. *Redfern* (1810), 12 East, 96; *Doe d. Evans* v. *Evans*, *supra*.

(*f*) Shelford, Law of Mortmain (1836), p. 10. A report of a commission of this kind is set out in *ibid.* pp. 10, 11, n. (e).

(*g*) *Ex parte Webster* (1802), 6 Ves. 809.

(*h*) Com. Dig. tit. Prerogative, D, 83, 84; *Ex parte Gwydir* (*Lord*) (1819), 4 Madd. 281, 322. It is doubtful whether a trustee has a similar right (*Re Sadler* (1816), 1 Madd. 581; Shelford, Law of Mortmain (1836), p. 12.

(*i*) Crown Suits Act, 1769 (9 Geo. 3, c. 16).

(*k*) Grant, Law of Corporations (1850), p. 103.

(*l*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 3.

(*m*) *Ibid.*, s. 2.

SECT. 3. Ownership of Property.

generally obtained by petition to the King through the Home Office (*n*). It is usually granted by letters patent or by writ of privy seal (*o*), but it may also be granted by a general Act of Parliament (*p*), or by the special Act or charter establishing the corporation (*q*).

A licence in mortmain to a corporation sole ought to be made to him and his successors by his corporate name only (*r*).

Extent of licence.

819. A licence must be strictly followed (*s*), does not determine upon the death of the Sovereign granting it (*t*), may be revoked before execution (*a*), may not be assigned (*b*), may be given for several purchases (*c*), and usually specifies the amount in value of the lands to be held under it (*d*).

A licence to purchase lands and tenements (*e*) or hereditaments (*f*) enables advowsons to be purchased.

The validity of charters, licences, and customs in force at the passing of the Mortmain and Charitable Uses Act, 1888, and enabling lands to be assured and held in mortmain, is not affected by that Act (*g*).

The provisions relating to a transfer to a corporation of land within the districts affected by the Land Transfer Acts are contained in the Land Transfer Rules, 1903 (*h*).

Conditions as to alienation in mortmain.

820. A condition against alienation in mortmain is good (*i*); but if a grant or devise contains a condition that the grantee or devisee

(*n*) Shelford, Law of Mortmain (1836), p. 41. The petition is referred to the Attorney-General, upon whose report the licence is granted or refused (*ibid.*). For form of petition, see Encyclopædia of Forms, Vol. III., p. 18, and for form of licence, see Shelford, Law of Mortmain (1836), p. 891. For fees payable on grant of a licence in mortmain, see Statutory Rules and Orders Revised, Vol. II., Clerk of the Crown in Chancery, p. 7.

(*o*) Grant, Law of Corporations (1850), p. 102.

(*p*) See Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 19, and Sched. III., Form F (licence of Board of Trade); Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 107.

(*q*) *Robinson* v. *London Hospital Governors* (1853), 10 Hare, 19; and see *Re Bradley, Oldenshaw* v. *Governesses Benevolent Institution* (1887), 3 T. L. R. 668.

(*r*) Bro. Abr. tit. Tender, pl. 15; Y. B. 14 Hen. 7, fol. 31; Y. B. 15 Hen. 7, fol. 1.

(*s*) *Pexhall's* (*Sir Richard*) *Case* (1610), 8 Co. Rep. 83 b, 85 a; *R.* v. *Newton* (1618), J. Bridg. 113; *Mogg* v. *Hodges* (1750), 2 Ves. Sen. 52; 15 Vin. Abr., tit. Licence, C, 93.

(*t*) Co. Litt. 52 b; Fitz. Nat. Brev. 223 G; *Wroth's* (*Sir Thomas*) *Case* (1573), 2 Plowd. 457.

(*a*) *Anon.* (1573), Dyer, 323 a; *Whistler's Case* (1612), 10 Co. Rep. 63 a, 65 b.

(*b*) *Web* v. *Paternoster* (1619), Palm. 71, 74.

(*c*) Shelford, Law of Mortmain (1836), p. 40.

(*d*) *Ibid.*, p. 41.

(*e*) Vin. Abr. tit. Alienation, B, 279, pl. 2; *London* v. *Southwell Collegiate Church* (1619), Hob. 303.

(*f*) *Whistler's Case, supra.*

(*g*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 12. As an example of a custom, citizens and freemen of London claimed the right of devising lands in the City, without licence (2 Bac. Abr. tit. Charitable Uses, B; *ibid.* tit. Customs of London, A; Bro. Abr. tit. London, pl. 13, p. 70; *London's* (*City*) *Case* (1609), 8 Co. Rep. 121 b, 129 a; *Middleton* v. *Cater* (1793), 4 Bro. C. C. 409; Shelford, Law of Mortmain (1836), p. 9.

(*h*) Rr. 144 and 146; see also *ibid.*, Sched. I., Form No. 36; see title SALE OF LAND.

(*i*) Grant, Law of Corporations (1850), p. 104.

should alien in mortmain, the condition is void, with the result that the grantee or devisee takes absolutely (*k*).

SUB-SECT. 3.—*Acquisition of Land.*

Corporation sole.

821. Land may be granted to a corporation sole without a deed (*l*), though the usual mode of making such a conveyance is now by deed of grant (*m*), and a corporation sole may acquire land under a will (*n*).

Leaseholds.

Leaseholds, however, cannot be granted to a corporation sole in his corporate, but only his natural, capacity (*o*), and therefore a lease granted to a corporation sole passes to his personal representatives, and not to his successors (*p*).

Form of grant.

A corporation sole must be in legal possession of his office when a grant of lands to him, whether in possession or reversion, takes effect, otherwise it will be void (*q*). The grant must be made to him and his successors, otherwise the actual holder of the office will take an estate for life in his natural capacity (*r*). But a fee simple may sometimes pass to a corporation sole without the word "successors." Thus, if a feoffment in fee be made of land to a bishop to have and to hold to him in free alms, a fee simple will pass without the word "successors." So also, if a man give lands to the King by deed enrolled, a fee simple will pass without the word "successors" or "heirs," because in law the King never dies (*s*).

Where the christian or surname of a corporation sole appears in a grant of lands, it is a question of construction whether the grant is to the corporation to go in succession, or to the individual occupant described by his official title. The presence of the word "successors" will be strong evidence to show that the grant is to go to the corporation as such (*t*).

Corporation aggregate.

822. A corporation aggregate cannot, generally speaking, take an interest in land or even do any acts of importance in relation thereto without a deed, but there are several exceptions to this

(*k*) *Doe d. Phillips* v. *Aldridge* (1791), 4 Term Rep. 264; *Doe d. Burdett* v. *Wrighte* (1819), 2 B. & Ald. 710.

(*l*) Co. Litt. 94 b.

(*m*) Under the Real Property Act, 1845 (8 & 9 Vict. c. 106).

(*n*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 2; and see note (*e*), p. 372, *post*.

(*o*) *Arundell's Case* (1615), 1 Roll. Abr. p. 515, cited in *Fulwood's Case* (1591), 4 Co. Rep. 64 b, 65 b, note A.

(*p*) Co. Litt. 46 b.

(*q*) *Holden* v. *Smallbrooke* (1667), Vaugh. 187, 199.

(*r*) *Robinson* v. *Lewis*, Y. B. 20 Edw. 4, fol. 2, pl. 7, *per* CHOKE, C.J.; and compare *Buckland* v. *Fowcher* (1486), 10 Co. Rep. 27 a. If lands be given to a corporation sole in his corporate capacity, the gift must be expressed to be "to him and his successors," for, without the word "successors" no inheritance passes (Co. Litt. 8 b), but only a life estate (Co. Litt. 94 b). Thus, land granted to the Bishop of S. and his heirs confers only a life estate (Co. Litt. 94 b, note 4). It is generally surmised that the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 51, does not apply to limitations to a corporation sole.

(*s*) Co. Litt. 9 b. As to tenure in free alms, see p. 373, *post*.

(*t*) *Ibid.*

SECT. 3. Ownership of Property.

rule (*a*). A grant by deed to a corporation aggregate without the use of the word "successors" passes the fee simple, because in law such a corporation never dies (*b*).

Formerly land was always conveyed to a corporation by feoffment, but this method, though still available if evidenced by a deed, has been superseded by a deed of grant (*c*).

Apart from the provisions of the Mortmain and Charitable Uses Acts (*d*), a corporation aggregate is as much entitled to take property under testamentary disposition as an ordinary person, for the Wills Act repealed all the former statutes restricting corporations from taking under such a disposition, and itself imposed no restriction of any kind (*e*).

If a corporation is authorised by statute to take land compulsorily for a definite purpose it cannot take that land for any other purpose (*f*). But with that qualification it may take the land subject to the same rights and incidents as against strangers as though it were a natural person (*g*).

Vacancy in headship.

Where a corporation aggregate has a head, a grant made to it whilst the headship is vacant is void (*h*). If, however, the grant is of a remainder or reversion, it will not be void provided that the corporation is complete at the time when the estate granted to the corporation falls into possession (*i*).

Prescription.

823. A corporation may acquire land by prescription and by deed and avail itself of both titles (*j*). It may prescribe to have common without number in gross (*k*). A member may prescribe in right of the corporation (*l*).

Copyholds.

824. A corporation sole or aggregate may hold the lordship of a manor in his or its corporate capacity, and in that capacity may make grants according to the custom of the manor so as to bind successors (*m*). But a corporation aggregate cannot be admitted tenant of copyhold lands (*n*), though it may obtain the beneficial interest in copyholds by the interposition of a trustee licensed to

(*a*) Co. Litt. 94 b, note 3. As to the exceptions, see p. 384, *post*.

(*b*) Co. Litt. 9 b.

(*c*) Under the Real Property Act, 1845 (8 & 9 Vict. c. 106). The reason why feoffment was adopted as the usual mode of conveying lands to a corporation was because a corporation could not be seised to a use (see p. 373, *post*).

(*d*) See pp. 367 *et seq.*, *ante*.

(*e*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 2.

(*f*) *Galloway* v. *London Corporation* (1866), L. R. 1 H. L. 34, 43; *Carington (Lord)* v. *Wycombe Rail. Co.* (1868), 3 Ch. App. 377, 381; *Bostock* v. *North Staffordshire Rail. Co.* (1855), 4 E. & B. 798, 829.

(*g*) *Swindon Waterworks Co.* v. *Wilts and Berks Canal Navigation Co.* (1875), L. R. 7 H. L. 697; *Bonner* v. *Great Western Rail. Co.* (1883), 24 Ch. D. 1, C. A., *per* BAGGALLAY, L.J., at p. 9.

(*h*) Co. Litt. 264 a.

(*i*) Grant, Law of Corporations (1850), p. 111.

(*j*) *Blackston* v. *Martin* (1625), Lat. 112, 113, n. As to prescription where the corporation has changed its name, see p. 308, *ante*.

(*k*) *Meller* v. *Staples* (1669), 1 Mod. Rep. 6.

(*l*) *Hinks* v. *Clerk* (1679), 2 Lev. 252.

(*m*) See title COPYHOLDS, p. 84, *ante*.

(*n*) *Ibid.*, at pp. 86, 105, *ante*.

hold the lands on its behalf. Thus, where a corporation is authorised by Act of Parliament to purchase certain lands, and a prescribed form of conveyance suitable only for the conveyance of freeholds is used for the purpose of conveying copyholds by a copyholder who dies without making any surrender, the corporation is entitled to have the customary heir of the deceased copyholder admitted as a trustee for the corporation (*o*).

Reverter to grantor.

825. A grant made by a person other than the founder to a corporation which has had no previous existence, and is not in existence at the time the grant is made, is void, whatever the estate granted may be (*p*). And in every case where lands are granted, whether in fee or any less estate, to a corporation, there is an implied condition that if the corporation is dissolved the lands will thereupon revert to the grantor (*q*). Thus, where a lease of lands is granted to a corporation, which is subsequently dissolved without having assigned the lease, notwithstanding that the term is not fulfilled, the reversion will be accelerated in favour of the lessor, and will not pass to the Crown as *bona vacantia* (*r*). Where, however, it is vested in a trustee for the corporation at the time of the dissolution of the latter, it will pass to the Crown (*s*).

Frankalmoign.

826. Religious corporations, whether aggregate or sole, may still (*t*) hold lands by the tenure known as frankalmoign, *in libera eleemosyna*, or free alms, whereby they hold of the donor to them and their successors for ever. This tenure is spiritual, and not feudal, and the services by which it is held are uncertain, except that fealty is never one of them (*u*).

Uses and trusts.

827. A corporation cannot be seised of land to a use (*w*). Hence, where a conveyance is made to a corporation to the use of another person, the latter will take only an equitable estate in the property conveyed (*x*). A corporation may hold lands in trust (*y*). But where the trust is for a charitable purpose, special statutory requirements must be observed (*z*). By statute (*a*) land other than copyhold land may be vested in the public trustee except where the trust is for religious or charitable purposes exclusively (*b*).

(*o*) *Grand Junction Canal Co.* v. *Dimes* (1846), 15 Sim. 402.
(*p*) Grant, Law of Corporations (1850), p. 111.
(*q*) 1 Bl. Com. 484; Co. Litt. 13 b; *Colchester Corporation* v. *Brooke* (1846), 7 Q. B. 339, *per* Lord DENMAN, C.J., at p. 384.
(*r*) *Hastings Corporation* v. *Letton*, [1908] 1 K. B. 378. For *bona vacantia*, see title CONSTITUTIONAL LAW, Vol. VII., p. 209.
(*s*) *Re Higginson and Dean, Ex parte A.-G.*, [1899] 1 Q. B. 325.
(*t*) Tenure by frankalmoign was expressly preserved by stat. 12 Car. 2, c. 24, s. 7; see title REAL PROPERTY AND CHATTELS REAL.
(*u*) 2 Bl. Com. 101.
(*w*) *Chudleigh's Case* (1589), 1 Co. Rep. 119 b, 122 a.
(*x*) Williams, Law of Real Property (1906), p. 298.
(*y*) *A.-G.* v. *Cashel Corporation* (1842), 2 Con. & Law. 1; *A.-G.* v. *Drapers' Co.* (1843), 6 Beav. 382; and see p. 366, *ante*.
(*z*) As to which see title CHARITIES, Vol. IV., pp. 124 *et seq.*
(*a*) Public Trustee Act, 1906 (6 Edw. 7, c. 55).
(*b*) *Ibid.*, s. 2 (5).

SECT. 3. SUB-SECT. 4.—*Nature of Estate.*

Ownership of Property.

Seisin.

828. Where a corporation is seised of lands, the seisin is in the corporation itself, and not in the person or persons or some of them of whom the corporation is composed or constituted (*c*). The members of the corporation have individually no seisin, legal or equitable, nor any freehold interest in such land, whatever may be their rights or interests in the net rents and profits thereof (*d*). Where the corporation has a head, the head has no seisin in the lands of the corporation (*e*).

Parliamentary freehold.

829. Where a corporation aggregate owns land the revenues of which go to support its members, the latter have no such interest in the land as would entitle them to vote at parliamentary elections (*f*). However, where a corporation sole is a member of a corporation aggregate, as, for instance, a canon residentiary of the chapter of a cathedral church, and as such corporation sole and in right thereof occupies a house over which the corporation aggregate has no control, his occupation is such as to entitle him as such corporation sole to vote at parliamentary elections (*g*).

The Crown.

830. Purchases of land made by the King after the assumption of the Crown vest in him as a corporation sole (*h*). All real property belonging to the King in right of his crown, including apparently property acquired by the King after his accession, attends upon and follows the Crown no matter what would have been

(*c*) *Baxter* v. *Brown* (1845), 7 Man. & G. 198, *per* MAULE, J., at p. 210. See *Rennell* v. *Lincoln* (*Bishop*) (1827), 7 B. & C. 113, *per* LITTLEDALE, J., at p. 166.

(*d*) *Acland* v. *Lewis* (1860), 9 C. B. (N. S.) 32. So, where the master of a college and his fellows are seised of corporate lands, they are seised solely in right of the college (*Fulmerston* v. *Steward* (1554), 1 Plowd. 102). Where lands were vested in a corporation for the benefit of its individual members, but not of itself as a corporate body, the corporation was held to be rateable to the poor in respect thereof (*R.* v. *York Corporation* (1837), 6 Ad. & El. 419).

(*e*) *Philips* v. *Bury* (1694), as reported 2 Term Rep. 346, *per* HOLT, C.J., at p. 355.

(*f*) *Harris* v. *Phillips* (1890), 1 Fox & S. Reg. 223, where VAUGHAN WILLIAMS, J., was of opinion that the members (the canons of Lincoln Cathedral) had no interest at all in the land, but only in the fund which arose after the rents had been received. Where a corporation is in the nature of a collegiate establishment of an eleemosynary character (for instance, the Naval Knights of Windsor), and the corporate property is held for the purposes of the corporation and for the benefit of the members as a corporate body, but, instead of living in one house, separate houses are assigned to the different members in accordance with the scheme of the corporation, the corporation itself is deemed to occupy the houses through its members, and the occupation of the members is not such as to entitle them individually to vote at parliamentary elections (*Durant* v. *Kennett* (1869), L. R. 5 C. P. 262; *Heath* v. *Haynes* (1857), 3 C. B. (N. S.) 389. As to the right of owners of lands to vote, see generally title ELECTIONS.

(*g*) *Ford* v. *Harington* (1869), L. R. 5 C. P. 282.

(*h*) Co. Litt. 15 b, note 4. A queen in her own right has the same status in all respects as a king (Grant, Law of Corporations (1850), p. 627). The King cannot hold land in his natural capacity, except in right of his Duchy of Lancaster, or an estate tail by the statute "De Donis" (See title CONSTITUTIONAL LAW, Vol. VII., pp. 273 *et seq.*), and if the King purchase lands to him and his heirs he takes them in his politic capacity; and whenever the King is said generally to be seised he has a seisin *jure coronæ* (*R.* v. *Smith* (1702), 7 Mod. Rep. 78). The lands and possessions of the Duchy of Lancaster were separated from the Crown by a charter of Henry IV. made by authority of Parliament; see title CONSTITUTIONAL LAW, Vol. VII., p. 217.

the legal course of devolution in the case of a subject. Thus, gavelkind lands will descend to the King's eldest son instead of to all his sons (*i*). The King cannot take lands jointly with a subject, but only in his corporate capacity in right of the Crown as tenant in common (*k*), nor can he be a tenant by copy of court roll of copyhold lands (*l*).

SUB-SECT. 5.—*Alienation of Land.*

General right of alienation.

831. At common law corporations, of whatever nature, have a general right to alienate their lands held in fee (*m*); and this inherent power of alienation (except in the case of corporations holding to charitable uses) is independent of anything in the nature of a trust imposed upon the corporation in favour of either its individual members or the purposes for which it was constituted (*n*).

But a corporation aggregate with a head cannot make a grant while the headship is vacant; for the functions of the corporation are suspended pending the appointment of a new head (*o*).

A statutory corporation cannot alienate land except for the purposes of its incorporation, even for valuable consideration (*p*).

Alienation is usually effected by deed under the corporate seal (*q*). A clause in a charter restraining alienation except in a certain form is not binding in law (*r*).

Leases.

832. A corporation aggregate or sole has a right at common law to grant leases of its corporate lands (*s*). But this power has in many cases been restricted or modified by statute (*t*); and as a general rule a lease can only be granted by the corporation itself under its corporate seal (*u*).

(*i*) Co. Litt. 15 b. By statute all lands and land revenues belonging to the Crown are under the management of the Commissioners of His Majesty's Woods, Forests and Land Revenues (Crown Lands Act, 1829 (10 Geo. 4, c. 50)).

(*k*) Grant, Law of Corporations (1850), 630. It appears that the Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20), does not apply to the Crown.

(*l*) See title COPYHOLDS, p. 86, *ante*.

(*m*) As to alienation by the Crown, see title CONSTITUTIONAL LAW, Vol. VII., pp. 151 *et seq.*

(*n*) *Colchester Corporation* v. *Lowten* (1813), 1 Ves. & B. 226; and see *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 30 b. Many corporations, such as ecclesiastical corporations, the universities etc., which do not come within the scope of this article, are under special statutory control with regard to their powers of alienation. A hospital founded under 39 Eliz., c. 5, which enables persons to found hospitals for the poor and to incorporate them, cannot, however, alienate or concur in alienating real estates conveyed to and vested in it under that Act (*Newcastle-upon-Tyne Corporation* v. *A.-G.* (1845), 12 Cl. & Fin. 402, H. L.).

(*o*) Grant, Law of Corporations (1850), p. 146.

(*p*) *Mulliner* v. *Midland Rail. Co.* (1879), 11 Ch. D. 611.

(*q*) *Winne* v. *Bampton* (1747), 3 Atk. 473, 475; and see Real Property Act, 1845 (8 & 9 Vict. c. 106).

(*r*) *Sutton's Hospital Case, supra.*

(*s*) See p. 356, *ante*.

(*t*) See titles ECCLESIASTICAL LAW; EDUCATION; LOCAL GOVERNMENT.

(*u*) *Winne* v. *Bampton, supra.* A corporation aggregate may, however, sue in respect of the use and occupation of land by a tenant who has occupied

SECT. 3. Ownership of Property.

If a lease be granted by a corporation sole of lands belonging to him in his corporate capacity, the benefit of the covenants in the lease will pass to his successors in office, but they will not be bound by any other covenants unless they are covenants usually inserted in leases of the corporate lands (*w*). A lease, however, granted by a corporation sole, though void against his successor, may be good against himself (*a*). A corporation sole cannot make a lease to himself in either his corporate or individual capacity, for he cannot be lessor and lessee at the same time (*b*). Nor can one of two or more constituent parts of a corporation aggregate lease lands belonging to the corporation to another of its integral parts as distinguished from a mere corporator (*c*). Thus, a dean and chapter cannot make a grant to the dean, but they can make grants to one of the chapter (*d*); and, in the latter case, the subsequent accession of the grantee to the headship of the corporation will not avoid the lease (*e*).

By its constitution a corporation may be restrained from granting leases of its lands for more than twenty-one years, and in such a case a covenant for renewal at the determination of that term will be bad (*f*). Where, however, a corporation has covenanted to renew leases for ever, renewal may be decreed by the court notwithstanding that during the past sixty years the rent has been applied for a charitable purpose (*g*).

Charges.

833. Where a creditor of a statutory corporation can take property belonging to the corporation in execution of his debt, the corporation can, by implication, execute to that creditor a valid charge upon that property in favour of the creditor as security for the debt. Hence, such a corporation may charge its superfluous lands although it has no express power to do so (*h*).

Easements.

834. So long as it is consistent with the purposes for which a corporation is authorised to hold land, it may grant easements over that land like an ordinary individual (*i*).

premises under it and paid rent, even though the permission to use and occupy the land was not given under deed (*Stafford Corporation* v. *Till* (1827), 12 Moore (C. P.), 260). And where the occupier has held under a lease which was void for not being under the corporate seal, and has paid rent under it to the corporation, a tenancy from year to year on the terms, so far as applicable, of the void lease will be implied (*Wood* v. *Tate* (1806), 2 Bos. & P. (N. R.) 247; *Doe d. Pennington* v. *Taniere* (1848), 12 Q. B. 998); see also p. 384, *post*.

(*w*) Com. Dig. tit. Covenant, C, 3.

(*a*) Co. Litt. 45 a, note 4.

(*b*) *Salter* v. *Grosvenor* (1723), 8 Mod. Rep. 303, 304.

(*c*) *Ibid.*

(*d*) *R.* v. *Rogers* (1702), 2 Ld. Raym. 777, 778.

(*e*) 15 Vin. Abr. 362, pl. 3.

(*f*) *Watson* v. *Hemsworth Hospital* (*Master*) (1807), 14 Ves. 324, 333.

(*g*) *Gozna* v. *Grantham Corporation* (1827), 3 Russ. 261.

(*h*) *Stagg* v. *Medway* (*Upper*) *Navigation Co.*, [1903] 1 Ch. 169; followed in *Reeve* v. *Medway* (*Upper*) *Navigation Co.* (1905), 21 T. L. R. 400.

(*i*) *Re Gonty and Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; *Mulliner* v. *Midland Rail. Co.* (1879), 11 Ch. D. 611.

835. The personal representative of a vicar choral may be liable at the suit of his successor for dilapidations of the house held by him in his corporate capacity (*k*). Corporations sole.

Income from investments in court representing purchase-money of lands belonging to a corporation sole in right of his office may be ordered to be paid to the holder or incumbent for the time being (*l*).

SUB-SECT. 6.—*Property other than Land.*

836. Corporations aggregate may take and hold personal property of every kind, and to any amount (*m*). Apart from statute or special custom, pure personal property cannot be vested absolutely in a corporation sole, but passes to his executors or administrators, and not to his successors (*n*). Whenever by statute or by special custom, as in the case of the Chamberlain of London, chattels or choses in action may be vested in a corporation sole, such corporation sole has the right to receive and get in and give a good discharge for the property thus vested in him (*o*). Personalty.

A franchise may be vested in a corporation for the benefit of members of it (*a*). Franchise.

SUB-SECT. 7.—*Liability to Taxation.*

837. A corporation pays income tax upon its income, from whatever source derived, in the same way as an individual (*b*). It is not, however, entitled to claim exemption where its income falls below the taxable limit (*c*), nor to be taxed upon the lower scale in respect of earned income (*d*). Income tax.

In addition to income tax (*e*), a corporation, inasmuch as it escapes the payment of death duties, pays a further duty by way of Corporation duty.

(*k*) *Gleaves* v. *Parfitt* (1860), 7 C. B. (N. S.) 838.

(*l*) *Re East Lincolnshire Rail. Co.'s Acts, Ex parte Canterbury (Archbishop)* (1848), 2 De G. & Sm. 365.

(*m*) *Fulwood's Case* (1591), 4 Co. Rep. 64 b; Com. Dig. tit. Franchise, F, 15; 1 Bl. Com. 478.

(*n*) *Power* v. *Banks*, [1901] 2 Ch. 487, *per* COZENS-HARDY, J., at p. 495. Compare *Tufnell* v. *Constable* (1838), 7 Ad. & El. 798, where it was held that money may be invested in stock in the corporate names of two or more corporations sole as trustees for charitable purposes, and that it is no objection thereto that, upon the death of a trustee, his estate or interest will or may not pass to his successor in office.

(*o*) *Power* v. *Banks, supra.*

(*a*) *Winton Corporation* v. *Wilks* (1705), 2 Ld. Raym. 1129, 1134.

(*b*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 40; *Re Surrey County Cricket Club*, [1901] 2 K. B. 400, *per* PHILLIMORE, J., at p. 411. For the full treatment of the taxation of corporate incomes, see title INCOME TAX.

(*c*) *Curtis* v. *Old Monkland Conservative Association*, [1906] A. C. 86, where it was held that the exemption given by s. 163 of the Income Tax Act, 1842 (5 & 6 Vict. c. 35), to "any person charged" whose income is below the limit did not extend to the various bodies charged under s. 40. In *Mylam* v. *Market Harborough Advertiser Co.*, [1905] 1 K. B. 708, PHILLIMORE, J., whilst holding that a limited company was not exempt, had declined to express any opinion on the general question.

(*d*) Finance Act, 1907 (7 Edw. 7, c. 13), s. 19, which uses the word "individual" throughout.

(*e*) *Re Surrey County Cricket Club, supra, per* PHILLIMORE, J., at p. 411.

SECT. 3. Ownership of Property.

compensation to the revenue (*f*). This duty is levied on the annual value, income, or profits (*g*), accruing to the corporation, during the year of assessment, from all its property, real and personal, after deducting the necessary outgoings (*h*), and forms a first charge thereon (*i*). An annual return containing particulars of such property, the gross annual value, income, or profits thereof, and the deductions claimed, must be made to the Commissioners of Inland Revenue (*k*). Certain classes of property, however, are exempted from such duty (*l*), including property which has, during the preceding thirty years, been acquired by voluntary contributions, or in respect of which legacy or succession duty has, during the same period, been paid (*m*).

Estate duty.

838. Estate duty is not charged on property in respect of which the deceased or another person was interested as a corporation sole (*n*). In respect of pictures, books, manuscripts, works of art or scientific collections of national, scientific, or historic interest, bequeathed for national purposes, or to any university, county council or municipal corporation, the Treasury may remit the estate or any other death duty (*o*).

Succession duty.

A corporation acquiring real property under a will (*p*) is liable to succession duty, which is assessed on the principal value of the property (*q*). The duty may be paid in instalments; and the amount thereof raised on the security of the property (*r*). The duty is assessed and payable in the same way where a corporation purchases reversionary property from an individual; but the rate of duty is that which would have been paid if no alienation had taken place (*s*).

Legacy duty.

In respect of a gift by will of personalty to a corporation legacy duty is payable (*t*). No legacy duty, however, is payable in the case of books, prints, pictures, statues, gems, coins, medals, specimens of natural history or other specific articles, bequeathed to or in trust for any corporation, sole or aggregate, in order to be kept and preserved, and not for the purposes of sale (*u*).

(*f*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11. As to this duty, see further title REVENUE.

(*g*) As to the meaning of these words, see *Re Surrey County Cricket Club*, [1901] 2 K. B. 400.

(*h*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11.

(*i*) *Ibid.*, s. 14.

(*k*) *Ibid.*, s. 15.

(*l*) For a full list of exemptions, see title REVENUE.

(*m*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11 (6), (7).

(*n*) Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2 (1) (b). For the full treatment of the law relating to death duties, see title DEATH DUTIES.

(*o*) *Ibid.*, s. 15 (2).

(*p*) As to the restrictions on the acquisition of real property by will, see p. 367, *ante*.

(*q*) Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 27.

(*r*) *Ibid.*

(*s*) *S.-G.* v. *Law Reversionary Interest Society* (1873), L. R. 8 Exch. 233.

(*t*) Legacy Duty Act, 1796 (36 Geo. 3, c. 52), s. 6.

(*u*) Legacy Duty Act, 1799 (39 Geo. 3, c. 73), s. 1.

SECT. 4.—*In Contract.*

SUB-SECT. 1.—*In General.*

Restrictions.

839. A corporation is as fully capable of binding itself by any contract as an individual (*a*), except as to those contracts which from the nature or object of the corporation, or from the express or implied terms of its constitution, it is prohibited from making (*b*).

A contract purporting to be made on behalf of a corporation before it is incorporated cannot be adopted or ratified by it after incorporation (*c*). It is necessary for a new contract to be made embodying the terms of the old contract (*d*). The mere fact that a corporation has obtained the advantage of payments made or work done before its incorporation does not render it liable to repay the sums expended, or to pay the cost of the work (*e*).

Formalities.

In some cases corporations are by their constitutions required to observe certain formalities when making contracts for particular purposes. In these cases the requirements of the constitution must be strictly carried out (*f*). In certain other cases contracts entered into by corporate bodies are governed by general enabling Acts of Parliament (*g*).

(*a*) *Bateman* v. *Ashton-under-Lyne Corporation* (1858), 3 H. & N. 323, *per* MARTIN, B., at p. 335. Thus, a contract of apprenticeship may be made between an individual and a corporation aggregate so as to bind the individual as apprentice to the corporation as master (*Burnley Equitable Co-operative and Industrial Society, Ltd.* v. *Casson*, [1891] 1 Q. B. 75). A corporation being a party to proceedings in a county court may execute under its corporate seal the bond required on the removal of the action to a superior court (*Re Young* v. *Brompton, Chatham etc. Waterworks Co.; R.* v. *Kent County Court Registrar* (1861), 5 L. T. 310, decided on s. 39 of the County Courts Act, 1856 (19 & 20 Vict. c. 108). See also *Stone* v. *Yeovil Corporation* (1876), 2 C. P. D. 99, C. A.; *Newcastle-upon-Tyne Corporation* v. *A.-G.*, [1892] A. C. 568; *Eastern Union Rail. Co.* v. *Hart* (1852), 8 Exch. 116, Ex. Ch. As to the law of contract generally, see title CONTRACT, Vol. VII., pp. 327 *et seq.*

(*b*) *Shrewsbury and Birmingham Rail. Co.* (*Directors*) v. *North Western Rail. Co.* (*Directors*) (1857), 6 H. L. Cas. 113; *Preston* v. *Liverpool, Manchester etc. Rail.* (1856), 5 H. L. Cas. 605; *Scottish North Eastern Rail. Co.* v. *Stewart* (1859), 3 Macq. 382, H. L.; *East Anglian Rail. Co.* v. *Eastern Counties Rail. Co.* (1851), 11 C. B. 775; *Ashbury Railway Carriage and Iron Co.* v. *Riche* (1875), L. R. 7 H. L. 653; *Bateman* v. *Ashton-under-Lyne Corporation, supra;* and as to *ultra vires* generally, see p. 359, *ante.*

(*c*) *Kelner* v. *Baxter* (1866), L. R. 2 C. P. 174; and for contracts by promoters and directors of joint stock companies, see title COMPANIES, Vol. V.

(*d*) *Natal Land and Colonisation Co.* v. *Pauline Colliery Syndicate*, [1904] A. C. 120, 126, P. C.

(*e*) *Re National Motor Mail-Coach Co., Ltd., Clinton's Claim*, [1908] 2 Ch. 515, C. A.; *Re English and Colonial Produce Co., Ltd.*, [1906] 2 Ch., 435, C. A., *per* ROMER, L.J., at p. 442; *Falcke* v. *Scottish Imperial Insurance Co.* (1886), 34 Ch. D. 234, C. A., *per* BOWEN, L.J., at p. 250.

(*f*) Thus, an appointment of an agent of a railway company to negotiate with another railway company for a lease of the line was held to be bad, because, although made by resolution of the board of directors and signed by the chairman, it was not under the company's seal or signed by three directors as required by the company's special Act (*Cope* v. *Thames Haven and Dock Rail. Co.* (1849), 3 Exch. 841). See *Stevens* v. *Hounslow Burial Board* (1889), 61 L. T. 839; *Frend* v. *Dennett* (1858), 4 C. B. (N. S.) 576; *Hunt* v. *Wimbledon Local Board* (1878), 4 C. P. D. 208; *Eaton* v. *Basker* (1881), 7 Q. B. D. 529, C. A.

(*g*) As, for instance, Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 6 (see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI.,

SECT. 4. In Contract.

840. A member entering into a contract with a corporation is, for all the purposes connected with the contract, deemed to be a stranger to the corporation (*h*).

Contracts with corporations sole.

841. A personal contract with a corporation sole, though made not for his personal benefit, but for that of himself and his successors, will pass on his death to his legal personal representatives. It makes no difference that the contract is entered into pursuant to statutory direction, as, for instance, the bond directed to be given to the ordinary by a person taking out administration to the estate of a deceased intestate under the Statute of Distributions (*i*). But by special custom the benefit of a contract (*e.g.*, a bond) may pass to the successor (*k*).

Entry in corporation books.

842. The entry in the books of a corporation of an application by a stranger to purchase a house belonging to the corporation, the amount of the purchase-money, and the receipt of a sum of money from the applicant is not evidence of a contract binding on the corporation (*l*).

SUB-SECT. 2.—*Necessity for the Seal.*

General rule.

843. Contracts entered into by a corporation aggregate, with certain exceptions (*m*), must be made under seal (*n*); otherwise they cannot be enforced either by (*o*) or against (*p*) the corporation. Nor will it be bound by the mere signing of such a contract by all the members of a corporation (*q*); nor by a mere resolution by a corporate assembly (*r*). The seal of the corporation, when affixed,

pp. 56 *et seq.*), Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 97 (see title COMPANIES, Vol. V.), Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 173, 174 (see title PUBLIC HEALTH ETC.); *Young & Co.* v. *Royal Leamington Spa Corporation* (1883), 8 App. Cas. 517; and p. 386, *post*.

(*h*) *Hill* v. *Manchester and Salford Waterworks Co.* (1833), 2 Nev. & M. (K. B.) 573, 582. But as to the disqualification of members of local government bodies by reason of interest in contracts made with the corporation, see titles ELECTIONS; LOCAL GOVERNMENT. For contracts with companies, see title COMPANIES, Vol. V.

(*i*) *Howley* v. *Knight* (1849), 14 Q. B. 240. But see now as to administration bonds, Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 81, and Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 15.

(*k*) *Byrd* v. *Wilford* (1593), 2 Cro. Eliz. 464.

(*l*) *Livesey* v. *Livesey* (1839), 9 L. J. (CH.) 73; and see *Carter* v. *Ely* (*Dean*) (1835), 4 L. J. (CH.) 132, 137; 7 Sim. 211.

(*m*) As to the exceptions to the rule, see p. 382, *post*.

(*n*) 6 Vin. Abr. 267; 1 Wms. Saund. 615, 616; and see the cases cited throughout this sub-section, all of which recognise this general rule. As to the seal which is to be used, see p. 309, *ante*.

(*o*) *Oxford Corporation* v. *Crow*, [1893] 3 Ch. 535, following *Kidderminster Corporation* v. *Hardwick* (1873), L. R. 9 Exch. 13.

(*p*) See the cases cited *infra*.

(*q*) *Taylor* v. *Dulwich Hospital* (1720), 1 P. Wms. 655. Eleemosynary and ecclesiastical corporations are not bound by any agreement, unless under seal, and therefore specific performance of a contract not under seal will not be enforced against such a corporation, even though all the individual members of it sign a memorandum of the agreement in the books of the corporation (*Carter* v. *Ely* (*Dean*) (1835), 4 L. J. (CH.) 132, 137).

(*r*) *Dunstan* v. *Imperial Gas Light and Coke Co.* (1831), 1 L. J. (K. B.) 49; see also *Start* v. *West Mersea School Board* (1899), 15 T. L. R. 442 (architect); *R.* v. *Stamford Corporation* (1844), 6 Q. B. 433.

is equivalent to signature by a natural person, and places the corporation in a similar position (*s*). It is probable, however, that where a contract under seal contains a power for an agent of the corporation to alter or vary the contract in detail, and the power is exercised, the corporation will not be allowed to repudiate the contract as varied or altered, by reason of the variations or alterations not being specifically authorised under the corporate seal (*a*).

Ratification.

A corporation, however, is not obliged to set up the absence of the corporate seal (*b*), and may ratify the contract under its seal (*c*) at any time before the contract has been broken or repudiated by the other party (*d*). Even where the contract has not been ratified, the corporation may be bound by acquiescence (*e*).

Agents and servants.

844. The appointment of an agent by a corporation must be, as a general rule, under the corporate seal (*f*), except where its constitution otherwise provides (*g*). Among the matters that must be under seal are—the appointment of a solicitor (*h*); a retainer of a solicitor to oppose a Bill in Parliament on its behalf (*i*); an authority to seize for forfeiture or enter for condition broken (*j*); an authority to enter for the purpose of revesting the estate in land

(*s*) *Dartford Union Guardians* v. *Trickett* (1888), 59 L. T. 754.

(*a*) *Williams* v. *Barmouth Urban District Council* (1897), 77 L. T. 383, *per* LAWRANCE, J., at p. 385, affirmed (1897), 77 L. T. 387, C. A. See also *Stevens* v. *Hounslow Burial Board* (1889), 61 L. T. p. 839.

(*b*) *Bournemouth Commissioners* v. *Watts* (1884), 14 Q. B. D. 87.

(*c*) *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601; *Melliss* v. *Shirley Local Board* (1885), 14 Q. B. D. 911, reversed on other grounds (1885), 16 Q. B. D. 446, C. A.; *Oxford Corporation* v. *Crow*, [1893] 3 Ch. 535.

(*d*) *Kidderminster Corporation* v. *Hardwick* (1873), L. R. 9 Exch. 13, *per* KELLY, C.B., at p. 22.

(*e*) *Hoare & Co., Ltd.* v. *Lewisham Corporation* (1902), 18 T. L. R. 816, C. A.; *Crook* v. *Seaford Corporation* (1871), 6 Ch. App. 551; *Laird* v. *Birkenhead Rail. Co.* (1859), John. 500; *London and Birmingham Rail. Co.* v. *Winter* (1840), Cr. & Ph. 57, *per* Lord COTTENHAM, L.C., at p. 63; *Wilson* v. *West Hartlepool Harbour and Rail. Co.* (1864), 34 Beav. 187.

(*f*) *R.* v. *Stamford Corporation, supra*; *Smith* v. *Cartwright* (1851), 6 Exch. 927; *Austin* v. *Bethnal Green Guardians* (1874), L. R. 9 C. P. 91.

(*g*) Thus, an appointment as architect to a school board was held a valid appointment of an officer, though not under seal, parol appointments of officers being specially permitted by the constitution (Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 30; *Scott* v. *Clifton School Board* (1884), 14 Q. B. D. 500. The Act of 1870, so far as material to this question, was repealed by the Education Act, 1902 (2 Edw. 7, c. 42, s. 25, Sched. IV., Part II.). Where, however, an architect was requested to draw plans and render professional services to a school board, and he did so, he failed in an action to recover payment for professional services rendered on the ground that there was no contract under seal (*Start* v. *West Mersea School Board, supra*).

(*h*) *Arnold* v. *Poole Corporation* (1842), 4 Man. & G. 860. There is an exception in the case of the corporation of the City of London (*ibid.*, at p. 896). Churchwardens and overseers having no common seal at common law cannot appoint an attorney whose office would not cease on a change in the membership of the body (*Re Stratford Bridge Improvememt Act, Ex parte Annesley* (1836), 2 Y. & C. (EX.) 350, 353).

(*i*) *Sutton* v. *Spectacle Makers' Co.* (1864), 10 L. T. 411.

(*j*) *Horn* v. *Ivy* (1669), 1 Vent. 47.

SECT. 4. In Contract.

of which a corporation has been disseised (*k*). A corporation may, however, employ an agent or servant to do ordinary services without a deed (*l*), as, for instance, a cook or butler (*m*); and a clerk to a corporation may be authorised to distrain on behalf of the corporation without such authority being under seal (*n*).

An assignment of auditors of the corporation accounts by its head or chief officer alone without the authority of a deed is good (*o*). But where the act to be done is of an extraordinary character, the servant's authority should be under seal (*p*).

In the case of a solicitor, a corporation after litigation has commenced is bound as against the other party by the acts of its solicitor, and cannot itself raise the objection that he has not been appointed under seal (*q*); nor can the other party raise this objection after taking any step in the action (*r*).

Discharge of officers.

Where an appointment to an office is made under seal, the discharge or dismissal from that office ought to be under seal also (*s*). Where the appointment is by election it is not usual to signify the result of such election under seal (*t*).

SUB-SECT. 3.—*When the Seal may be dispensed with.*

Express power to contract without seal.

845. A corporation may by the express terms of its constitution be enabled to contract without using its seal (*u*). Thus, a company incorporated under the Companies (Consolidation) Act, 1908 (*w*), is not bound to use its seal except as regards such contracts as are in the case of an individual required to be under seal (*x*). Any corporation which has power to bind itself by the contract contained in a bill of exchange, cheque, or promissory note (*y*) is under no obligation to use its seal (*a*).

(*k*) *Anon.* (1472), Jenk., case 68, p. 131. In ejectment by a corporation against a tenant from year to year it is not necessary for the corporation to prove that the steward by whom notice to quit was given had authority under the corporate seal to give the notice (*Roe* v. *Pierce* (1809), 2 Camp. 96).

(*l*) *Horn* v. *Ivy* (1669), 1 Vent. 47; Com. Dig. tit. Franchise, F 12, B.

(*m*) *Anon.* (1700), 1 Salk. 191.

(*n*) *Smith* v. *Birmingham and Staffordshire Gas Light Co.* (1834), 1 Ad. & El. 526.

(*o*) *Anon.* (1472), Jenk., case 68, p. 131.

(*p*) *Smith* v. *Birmingham and Staffordshire Gas Light Co., supra.*

(*q*) *Faviell* v. *Eastern Counties Rail. Co.* (1848), 2 Exch. 344. But a retainer by a corporation to a solicitor to conduct litigation on its behalf must be under the corporate seal to enable the latter to sue for his bill of costs (*Arnold* v. *Poole Corporation* (1842), 4 Man. & G. 860).

(*r*) *Thames Haven Co.* v. *Hall* (1843), 5 Man. & G. 274.

(*s*) Grant, Law of Corporations (1850), p. 58.

(*t*) *Ibid.*

(*u*) *R.* v. *Cumberland Justices* (1848), 17 L. J. (Q. B.) 102; *Scott* v. *Clifton School Board* (1884), 14 Q. B. D. 500; *Tilson* v. *Warwick Gas Light Co.* (1825), 4 B. & C. 962.

(*w*) 8 Edw. 7, c. 69, s. 76. A similar provision is contained in the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 97. See, generally, title COMPANIES, Vol. V.

(*x*) For such contracts, see title CONTRACT, Vol. VII., p. 360.

(*y*) See p. 362, *ante*.

(*a*) Bills of Exchange Act, 1882 (45 & 46 Vict. c. 59), s. 91 (2); and compare Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 77.

846. Any corporation may bind itself without using its seal in trivial matters of daily occurrence or in matters of urgent necessity (*b*). Matters of urgency or frequent occurrence.

847. A corporation incorporated for trading purposes has a general power to contract not under seal without reference to the magnitude or insignificance of the subject-matter (*c*). But the contract must be for a purpose connected with the objects of the incorporation (*d*). It is then immaterial whether the contract has been executed or not on either side (*e*). Trading corporations.

848. In the case of corporations other than trading corporations, the rights and liabilities of the corporation upon contracts which are not under seal, and which do not fall within the exceptions already mentioned, depend upon whether the contracts relate to matters incidental to the purpose for which the corporation exists, and whether the consideration therefor has been executed by the party seeking to enforce them (*f*). Non-trading corporations.

849. Where a contract is executed on the part of the corporation, and the other parties to it have received the benefit of the consideration moving from the corporation, such other parties are bound by the contract, notwithstanding that the contract was not made under the corporate seal (*g*). Contracts executed by the corporation.

(*b*) *Wells* v. *Kingston-upon-Hull Corporation* (1875), L. R. 10 C. P. 402 ; *Church* v. *Imperial Gas Light and Coke Co.* (1838), 6 Ad. & El. 846, 861 ; *East London Waterworks Co.* v. *Bailey* (1827), 4 Bing. 283 ; *Lawford* v. *Billericay Rural Council*, [1903] 2 K. B. 774, C. A., *per* MATHEW, L.J., at p. 785.

(*c*) *Beverley* v. *Lincoln Gas Light and Coke Co.* (1837), 2 Nev. & P. (Q. B.) 283 ; *Church* v. *Imperial Gas Light and Coke Co.*, *supra* ; *Henderson* v. *Australian Royal Mail Steam Navigation Co.* (1855), 5 E. & B. 409 ; *South of Ireland Colliery Co.* v. *Waddle* (1869), L. R. 4 C. P. 617, Ex. Ch. ; *Reuter* v. *Electric Telegraph Co.* (1856), 6 E. & B. 341 ; *Australian Royal Mail Steam Navigation Co.* v. *Marzetti* (1855), 11 Exch. 228 ; *Henderson* v. *Australian Royal Mail Steam Navigation Co.* (1855), 5 E. & B. 409 ; *Re Contract Corporation, Ebbw Vale Co.'s Claim* (1869), L. R. 8 Eq. 14.

(*d*) *South of Ireland Colliery Co.* v. *Waddle*, *supra*. Thus, where the charter of incorporation of a trading company expressly restricted its operations to dealings in copper, a contract, not under seal, to deal in iron rails could not be enforced against the corporation, notwithstanding that it appeared upon the evidence that the corporation had ceased to deal in copper and dealt only in iron (*Copper Miners Co.* v. *Fox* (1851), 16 Q. B. 229). And where a railway company entered into a parol agreement with a contractor for the purpose of changing the system of locomotion over its railway, the agreement was held not to be binding (*Diggle* v. *London and Blackwall Rail. Co.* (1850), 5 Exch. 442, where the court stated that the nature of the contract was such that neither convenience nor necessity required that it should be entered into otherwise than under the corporate seal. The case was not followed in *Henderson* v. *Australian Royal Mail Steam Navigation Co.*, *supra*. And again, where a dock company incorporated by Act of Parliament had entered into a parol agreement with the defendant to execute a contract under seal to scavenge the dock for a year, it was held that, as the object of the contract was not necessary for the carrying tion of the company's trade, the agreement, being parol, was not binding (*London Dock Co.* v. *Sinnott* (1857), 8 E. & B. 347).

(*e*) *Church* v. *Imperial Gas Light and Coke Co.*, *supra*.

(*f*) See the cases cited, pp. 384 *et seq.*, *post*.

(*g*) *Fishmongers' Co.* v. *Robertson* (1843), 6 Scott (N. R.), 56, *per* TINDAL, C.J., at p. 105 ; *Australian Royal Mail Steam Navigation Co.* v. *Marzetti* (1855), 11 Exch. 228.

SECT. 4. In Contract. Compromise.

A compromise of matters in dispute between a corporation and another person is binding on the latter though not under seal (*h*), especially if the corporation, on the strength of the agreement, has performed its part by forbearing to exercise or enforce what it considered to be its rights (*i*).

Contracts executed by the other party.

850. Similarly, in the absence of an express statutory requirement of a contract under seal (*j*), wherever the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry such purposes into effect, and orders are given at a corporate meeting regularly constituted and having general authority to make contracts for work or goods necessary for the purposes for which the corporation was created, and the work is done or goods supplied and accepted by the corporation and the whole consideration for payment executed, there is a contract to pay implied from the acts of the corporation, and the corporation cannot keep the goods or the benefit and refuse to pay on the mere ground that the formality of a deed or of affixing the seal was wanting (*k*). So a corporation will be bound by a parol agreement whereby it abandons its claim to prove in the bankruptcy of its mortgagor in consideration of the acceptance by it of a release of the equity of redemption in property mortgaged to it (*l*), and a demise of land from year to year may be presumed against a corporation (*m*). But although a corporation may become liable to an action for use and occupation of land, yet, even where such use and occupation has continued for a substantial period of time, it will not therefore render the corporation, by implied contract, tenant from year to year (*n*), unless the

(*h*) *Williams* v. *Barmouth Urban District Council* (1897), 77 L. T. 383, C. A.

(*i*) *A.-G.* v. *Gaskill* (1882), 22 Ch. D. 537, where a local board were by implication empowered by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 174, to make parol contracts under the Act where the value did not exceed £50; and the court said it was impossible to ascribe any value to the subject-matter of the compromise.

(*j*) See p. 386, *post*.

(*k*) *Lawford* v. *Billericay Rural Council*, [1903] 1 K. B. 772, C. A. (plans of sewerage extension scheme); following *Clarke* v. *Cuckfield Union Guardians* (1852), 21 L. J. (Q. B.) 349 (supply of water closets to workhouse); *Nicholson* v. *Bradfield Union Guardians* (1866), L. R. 1 Q. B. 620 (supply of coals to workhouse); and *Haigh* v. *North Brierley Union Guardians* (1858), E. B. & E. 873 (employment of special auditor to audit accounts of clerk suspected of fraud); *Sanders* v. *St. Neots' Union* (1846), 8 Q. B. 810 (supply of iron gates to workhouse); *De Grave* v. *Monmouth Corporation* (1830), 4 C. & P. 111 (supply of weights and measures); and *Doe d. Pennington* v. *Taniere* (1848), 12 Q. B. 998 (lease from year to year implied from receipt of rent), and disapproving *Ludlow Corporation* v. *Charlton* (1840), 6 M. & W. 815 (contract to pay for improvements); *Lamprell* v. *Billericay Union* (1849), 3 Exch. 283 (extras under building contract); *Smart* v. *West Ham Union Guardians* (1855), 10 Exch. 867; *Dyte* v. *St. Pancras Guardians* (1872), 27 L. T. 342 (appointment of medical officer).

(*l*) *Melbourne Banking Corporation* v. *Brougham* (1879), 4 App. Cas. 156, P. C.

(*m*) *Doe d. Pennington* v. *Taniere*, *supra*. As to the contractual relations arising between corporations and others with regard to the use and occupation of land, see further, p. 375, *ante*.

(*n*) *Finlay* v. *Bristol and Exeter Rail. Co.* (1852), 7 Exch. 409.

corporation has power (*o*) to make a contract by parol either directly or through an agent in respect of the land occupied (*p*).

Executory contracts.

851. If however the contract is still executory, it cannot be enforced either by or against the corporation unless it is under seal (*a*). A corporation, moreover, cannot bind itself by a contract made for a purpose in no way connected with the object for which the corporation was constituted (*b*). Similarly, where a contract entered into by a corporation is not for the benefit of the corporation itself, but for that of other persons, as, for instance, the retainer of a solicitor to oppose a bill in Parliament affecting a particular district, it must be under seal, as it does not come within the exceptions to the general rule (*c*).

Specific performance.

852. Where a parol contract with a corporation has been so far performed that fraud and injustice would result from allowing one party to refuse to perform his part, after performance by the other on the faith of the contract, a specific performance of such contract may be decreed, notwithstanding the want of the corporate seal (*d*). But a corporation will not be compelled to execute a legal assurance of corporate property in pursuance of a contract not under seal, unless valuable consideration for the contract be expressly proved or evidence be given of acts done or omitted by the contracting party on the faith of the contract (*e*). Similarly, where a person enters into a parol agreement with another purporting to act as the agent of a corporation to do something which is not an essential but a collateral object for which the corporation was formed, the fact that the agreement is carried out wholly by the one side and partly by the corporation will not be sufficient to raise an equity against

(*o*) For instance, under s. 97 of the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16).

(*p*) *Lowe* v. *North and North Western Rail. Co.* (1852), 18 Q. B. 632.

(*a*) *Kidderminster Corporation* v. *Hardwick* (1873), L. R. 9 Exch. 13.

(*b*) *Paine* v. *Strand Union Guardians* (1846), 8 Q. B. 326.

(*c*) *Phelps and Woodford* v. *Upton Snodsbury Highway Board* (1885), Cab. & El. 524.

(*d*) *Steevens' Hospital* (*Governors*) v. *John Dyas* (1864), 10 L. T. 882. Where the projectors of a proposed statutory corporation bought off opposition to the bill by contracting with the opponents that in consideration of the opposition being withdrawn certain things should be done (*e.g.*, that a certain bridge should be constructed to a width of fifty feet), and the Act was passed, the corporation was not allowed to use its powers so obtained without carrying out the contract; and that not as a matter of contract, but as a matter of equity (*Edwards* v. *Grand Junction Rail. Co.* (1836), 1 My. & Cr. 650. The decision in this case was not upon the principle that a corporation is bound by a contract made by an agent purporting to act on its behalf prior to its incorporation, but on the principle that if a party enters into an agreement by means and operation of which a body is afterwards incorporated and brought into existence and acquires powers, that corporation shall not be allowed to exercise power acquired through the medium of that previous contract and arrangement without carrying that contract and arrangement into full effect; see *Lindsey* (*Earl*) v. *Great Northern Rail. Co.* (1853), 10 Hare, 664, 679). But where, in such a case, nothing was done after incorporation nor any of the powers conferred by the act of incorporation were exercised, specific performance of the parol agreement entered into prior to the passing of the Act was not decreed against the corporation, the court being of opinion that it had done nothing to bring itself within the principle laid down in *Edwards* v. *Grand Junction Rail. Co.*, *supra* (*Gooday* v. *Colchester etc. Rail. Co.* (1852), 17 Beav. 132).

(*e*) *Wilmot* v. *Coventry Corporation* (1835), 1 Y. & C. (EX.) 518.

SECT. 4. In Contract.

the corporation sufficient to support a claim for specific performance in the nature of a mere claim for a money payment, if it appear that neither party at the time the agreement was entered into was ignorant of the rights of the other (*f*).

Public Health Act, 1875.

853. Where, however, the contract is made by an urban authority acting under the Public Health Act, 1875 (*g*), whereof the value or amount exceeds £50, the contract must be under seal (*h*), even though the contract has been executed by the other contracting party, and the benefit thereof enjoyed by the corporation (*i*). But it is not necessary for the seal to be placed upon the contract before performance (*k*), and the corporation may, if it chooses, pay for the benefit it has received, notwithstanding the absence of the seal (*l*).

SECT. 5.—*In Tort.*

Torts committed by a corporation.

854. A corporation aggregate (*m*) is liable to be sued for any tort, provided that (1) it is a tort in respect of which an action would lie against a private individual (*n*); (2) the person by whom the tort is actually committed is acting within the scope of his authority (*o*) and in the course of his employment on the corporation's behalf (*p*); and (3) the act complained of is not one which the corporation would not, in any circumstances, be authorised by its constitution to commit (*a*). Thus, an action will lie against a corporation for conversion (*b*), for trespass (*c*), for wrongful distress (*d*), for assault (*e*),

(*f*) *Crampton* v. *Varna Rail. Co.* (1872), 7 Ch. App. 562.

(*g*) 38 & 39 Vict. c. 55. See title PUBLIC HEALTH ETC.

(*h*) *Ibid.*, s. 174; *Hunt* v. *Wimbledon Local Board* (1878), 4 C. P. D. 48.

(*i*) *Young & Co.* v. *Royal Leamington Spa Corporation* (1883), 8 App. Cas. 517.

(*k*) *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601; and see p. 381, *ante*; *Melliss* v. *Shirley Local Board* (1885), 14 Q. B. D. 911, reversed on another point (1885), 16 Q. B. D. 446, C. A.

(*l*) *Bournemouth Commissioners* v. *Watts* (1884), 14 Q. B. D. 87. But if the original contract is under seal, a modification of it need not be (*Hunt* v. *Acton Urban District Council* (1908), 72 J. P. 345).

(*m*) No action lies against individual members for acts erroneously done by them in a corporate capacity and causing damage to the plaintiff, except on proof of malice (*Harman* v. *Tappenden* (1801), 1 East 555), or unless the act is *ultra vires*, and cannot be in contemplation of law a corporate act at all (*A.-G.* v. *Liverpool Corporation* (1835), 1 My. & Cr. 171; *A.-G.* v. *East Retford Corporation* (1838), 3 My. & Cr. 484; and see *Mill* v. *Hawker* (1874), L. R. 9 Exch. 309; affirmed (1875), L. R. 10 Exch. 92, Ex. Ch., where the court declined to deal with this point).

(*n*) *Green* v. *London General Omnibus Co.* (1859), 7 C. B. (N. S.) 290, *per* ERLE, C.J., at p. 1. As to the law of tort generally, see title TORT.

(*o*) *Barwick* v. *English Joint Stock Bank* (1867), L. R. 2 Exch. 259, Ex. Ch.

(*p*) *Poulton* v. *London and South Western Rail. Co.* (1867), L. R. 2 Q. B. 534.

(*a*) *Ibid.* In this case even express authority from the corporation to its agent to commit the tort will not render the corporation liable (*ibid.*, *per* BLACKBURN, J., at p. 540).

(*b*) *Yarborough* v. *Bank of England* (1812), 16 East, 6; *Giles* v. *Taff Vale Rail. Co.* (1853), 2 E. & B. 822, Ex. Ch.; and compare *Hall* v. *Swansea Corporation* (1844), 5 Q. B. 526.

(*c*) *Maund* v. *Monmouth Canal Co.* (1842), Car. & M. 606, 609; and see *Mill* v. *Hawker* (1875), L. R. 10 Exch. 92, Ex. Ch., when a surveyor, being instructed by a highway board in its corporate capacity to do an act which was in fact a trespass was held liable for the trespass, and the court expressly declined to give any opinion as to the liability of the individual members of the board.

(*d*) *Smith* v. *Birmingham Gas Co.* (1834), 1 Ad. & El. 526.

(*e*) *Eastern Counties Rail. Co.* v. *Broom* (1851), 6 Exch. 314, Ex. Ch.

SECT. 5. In Tort.

for negligence (*f*), for nuisance (*g*), for false imprisonment (*h*), for infringement of a patent (*i*), for keeping a dangerous animal (*k*), for breach of trust (*l*), and even for fraud (*m*), and for torts involving malice, such as malicious prosecution (*n*), and libel (*o*). A corporation may be sued upon a fraudulent representation as to the credit of a third person if made under its seal (*p*), but not if made in a letter written and signed by its agent (*q*); nor can it be guilty of maintenance (*r*).

Principles governing liability.

855. In order to fix a corporation with liability, the relation of principal and agent, or of master and servant, must be established between the corporation and the person who commits the tort (*s*) in respect of the tort in question (*a*). It is not necessary to prove that the agent was appointed under seal (*b*) or even that

(*f*) *Green* v. *London General Omnibus Co.*, (1859) 7 C. B. (N. S.) 290; *Limpus* v. *London General Omnibus Co.* (1862), 1 H. & C. 526, Ex. Ch.; *Scott* v. *Manchester Corporation* (1857), 2 H. & N. 204, Ex. Ch.; *Hardaker* v. *Idle District Council*, [1896] 1 Q. B. 335, C. A.; *Cooke* v. *Midland Great Western Rail. of Ireland*, [1909] A. C. 229.

(*g*) *Bathurst Borough* v. *Macpherson* (1879), 4 App. Cas. 256, P. C.

(*h*) *Goff* v. *Great Northern Rail. Co.* (1861), 3 E. & E. 672; *Moore* v. *Metropolitan Rail. Co.* (1872), L. R. 8 Q. B. 36.

(*i*) *Betts* v. *De Vitre* (1868), 3 Ch. App. 441.

(*k*) *Stiles* v. *Cardiff Steam Co.* (1864), 33 L. J. (Q. B.) 310; *Filburn* v. *People's Palace and Aquarium Co.* (1890), 25 Q. B. D. 258, C. A.

(*l*) *A.-G.* v. *Leicester Corporation* (1844), 7 Beav. 176.

(*m*) *Barwick* v. *English Joint Stock Bank* (1867), L. R. 2 Exch. 259, Ex. Ch., approved in *Houldsworth* v. *City of Glasgow Bank* (1880), 5 App. Cas. 317, *per* Lord SELBORNE, at p. 326; *Mackay* v. *Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394. In such a case the agent, if involved in the fraud, may be made a party to the action, in order to make him liable for the costs, although no relief is claimed against him (*Le Texier* v. *Anspach* (*Margravine*) (1808), 15 Ves. 154, 164).

(*n*) *Cornford* v. *Carlton Bank, Ltd.*, [1900] 1 Q. B. 22, C. A.; *Edwards* v. *Midland Rail. Co.* (1880), 6 Q. B. D. 287; *Bank of New South Wales* v. *Owston* (1879), 4 App. Cas. 270; see *contrà Abrath* v. *North Eastern Rail. Co.* (1886), 11 App. Cas. 247, *per* Lord BRAMWELL, at p. 250; *Stevens* v. *Midland Counties Rail. Co.* (1854), 10 Exch. 352.

(*o*) *Whitfield* v. *South Eastern Rail. Co.* (1858), E. B. & E. 115; *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423, P. C., and compare *Nevill* v. *Fine Arts and General Insurance Co.*, [1895] 2 Q. B. 156, C. A.

(*p*) *Bishop* v. *Balkis Consolidated Co.* (1890), 25 Q. B. D. 77, *per* VAUGHAN WILLIAMS, J., at p. 85; affirmed on other grounds (1890), 25 Q. B. D. 512, C. A.

(*q*) *Hirst* v. *West Riding Union Banking Co.*, [1901] 2 K. B. 560, C. A.; following *Swift* v. *Jewsbury* (1874), L. R. 9 Q. B. 301.

(*r*) *Metropolitan Bank* v. *Pooley* (1885), 10 App. Cas. 210, *per* Lord SELBORNE, at p. 218; see also *British Cash and Parcel Conveyors, Ltd.* v. *Lamson Store Service Co., Ltd.*, [1908] 1 K. B. 1006, 1012, 1021, C. A., where the point was discussed but not decided. As to maintenance, see title ACTION, Vol. I., pp. 51 *et seq.*

(*s*) See the cases cited throughout this sub-section, and titles AGENCY, Vol. I., p. 212; MASTER AND SERVANT.

(*a*) *Allen* v. *London and South Western Rail. Co.* (1870), L. R. 6 Q. B. 65; *Edwards* v. *London and North Western Rail. Co.* (1870), L. R. 5 C. P. 445; *Poulton* v. *London and South Western Rail. Co.* (1867), L. R. 2 Q. B. 534.

(*b*) *Yarborough* v. *Bank of England* (1812), 16 East, 6; *Smith* v. *Birmingham and Staffordshire Gas Light Co.* (1834), 1 Ad. & El. 526; *Maund* v. *Monmouthshire Canal Co.* (1842), 4 Man. & G. 452; *Eastern Counties Rail. Co.* v. *Broom* (1851), 6 Exch. 314, Ex. Ch.: *Goff* v. *Great Northern Rail. Co., supra; Mill* v. *Hawker* (1874), L. R. 9 Exch. 309; (1875) L. R. 10 Exch. 92, Ex. Ch.; *Metropolitan Asylum District* v. *Hill* (1881), 6 App. Cas. 193.

SECT. 5. In Tort.

he was in any way formally appointed (*c*). Nor need express authority to commit the tort be proved (*d*). It is sufficient to show that there is an implied authority, which is to be inferred from the nature of the agent's employment (*e*).

Holding out.

Thus, where a corporation holds out its officer or agent in such a manner as to imply that an act done by him within the scope of his authority is warranted to be genuine, as, for instance, the giving of a certificate for shares in the corporation, it will not be allowed to dispute the validity of that act (*f*). But it must be proved that the corporation has held out that its officer or agent had authority to do something more than a mere ministerial act; and the court will not infer from the mere ministerial discharge of his ordinary duties by an officer or agent of a corporation that thereby the corporation held out that the act was genuine (*g*).

Ratification.

Where no authority, express or implied, to commit the act complained of can be proved, the corporation may render itself liable by subsequent ratification (*h*), provided that the act is capable of being ratified by the corporation in question (*i*).

Exercise of statutory powers.

856. Where a corporation, in the exercise of powers conferred upon it by statute, does an act which would be actionable if done by an individual, the corporation will be exempt from liability, if

(*c*) *Giles* v. *Taff Vale Rail. Co.* (1853), 2 E. & B. 822, Ex. Ch.

(*d*) *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423, P. C.

(*e*) *Limpus* v. *London General Omnibus Co.* (1862), 1 H. & C. 526, Ex. Ch. (prohibited act); *Barwick* v. *English Joint Stock Bank* (1867), L. R. 2 Exch. 259, Ex. Ch. (fraud); *Mackay* v. *Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394 (malicious act); *Moore* v. *Metropolitan Rail. Co.* (1872), L. R. 8 Q. B. 36, and *Poulton* v. *London and South Western Rail. Co.* (1867), L. R. 2 Q. B. 534 (false imprisonment); *Cornford* v. *Carlton Bank*, [1900] 1 Q. B. 22, C. A., following *Edwards* v. *Midland Rail. Co.* (1880), 6 Q. B. D. 287; and see *Bank of New South Wales* v. *Owston* (1879), 4 App. Cas. 270, P. C. (malicious prosecution); *Bayley* v. *Manchester, Sheffield, and Lincolnshire Rail. Co.* (1873), L. R. 8 C. P. 148, Ex. Ch. (assault); *Evans* v. *Liverpool Corporation*, [1906] 1 K. B. 160 (negligence); compare *Hillyer* v. *St. Bartholomew's Hospital (Governors)* (1909), 25 T. L. R. 468; and see, generally, title AGENCY, Vol. I., pp. 212 *et seq.*

(*f*) *Shaw* v. *Port Philip Co., Ltd.* (1884), 13 Q. B. D. 103, where, the secretary of a company having fraudulently applied the corporate seal and forged the signature of a director to a certificate, which it was within the course of his authority and duty to prepare and get completed, the company was held responsible.

(*g*) *Ruben* v. *Great Fingal Consolidated*, [1906] A. C. 439.

(*h*) *Smith* v. *Birmingham and Staffordshire Gas Light Co.* (1834), 1 Ad. & El. 526; *Eastern Counties Rail. Co.* v. *Broom* (1851), 6 Exch. 314. See, generally, title AGENCY, Vol. I., p. 145. Where acts proper to be performed by a corporation aggregate are done by its permanent officials and agents in its name, and are afterwards acted upon by the corporation, such acts are the acts of the corporation, or, at any rate, have been ratified by it (*Cheetham* v. *Manchester Corporation* (1875), L. R. 10 C. P. 249). Where a servant of a corporation authorises a person to take possession of a piece of land belonging to it, and subsequently another servant of the same corporation serves him with notice to give up possession, it may rightly be left to the jury to infer that both servants were duly authorised by the corporation so to act notwithstanding that no lease or notice or appointment of the servants as agents under seal be produced (*Doe* d. *Birmingham Canal Co.* v. *Bold* (1847), 11 Q. B. 127; compare *Wilson* v. *West Hartlepool Harbour and Rail. Co.* (1864), 34 Beav. 187).

(*i*) *Poulton* v. *London and South Western Rail. Co.*, *supra*.

from the terms of the statute it is clear (*k*) that the Legislature intended to authorise the doing of the act in question (*l*), and to render it not actionable (*a*). The exemption from liability may exist even where no compensation is given by the statute to the person injured (*b*), though a presumption is raised from the absence of any provision as to compensation that the intention of the Legislature was not that the act should be done at all events, but only that it should be done if it could be done without injury to others (*c*). In the exercise of its statutory powers, the corporation is bound to take all reasonable precautions to prevent injury arising therefrom (*d*); for, if it is negligent, it is liable (*e*) even though the powers are exercised in the public interest and not for its own benefit (*f*). In the absence of negligence, however, it will not be liable merely because it might, by acting in a different way, have minimised the injury (*g*).

Negligence.

If the statute is permissive only in its terms, the corporation will be liable, even in the absence of negligence (*h*), in the same way as an individual (*i*).

Permissive statute.

When a corporation, by its failure to carry out its statutory duties,

Statutory duties.

(*k*) *Ogston* v. *Aberdeen District Tramways Co.*, [1897] A. C. 111.

(*l*) *R.* v. *Pease* (1832), 4 B. & Ad. 30; *Whitehouse* v. *Birmingham Canal Co.* (1857), 27 L. J. (EX.) 25; *A.-G.* v. *Birmingham Corporation* (1858), 4 K. & J. 528; *Dunn* v. *Birmingham Canal Co.* (1872), L. R. 8 Q. B. 42; *Green and Haydon* v. *Chelsea Waterworks Co.* (1894), 10 T. L. R. 259, C. A.; *Canadian Pacific Rail. Co.* v. *Roy*, [1902] A. C. 220, P. C.; *Lambert* v. *Lowestoft Corporation*, [1901] 1 Q. B. 590; *Tozeland* v. *West Ham Union*, [1907] 1 K. B. 920, C. A.; *West* v. *Bristol Tramways Corporation*, [1908] 2 K. B. 14, C. A.

(*a*) *Metropolitan Asylum District* v. *Hill* (1881), 6 App. Cas. 193, *per* Lord BLACKBURN, at p. 208; *Midwood & Co., Ltd.* v. *Manchester Corporation*, [1905] 2 K. B. 597, C. A.; *Evans* v. *Manchester, Sheffield, and Lincolnshire Rail. Co.* (1887), 36 Ch. D. 626; *Coe* v. *Wise* (1866), L. R. 1 Q. B. 711, Ex. Ch., *per* ERLE, C.J., at p. 721; *East Freemantle Corporation* v. *Annois*, [1902] A. C. 213, P. C. See, generally, title NUISANCE.

(*b*) *Hammersmith etc. Rail. Co.* v. *Brand* (1869), L. R. 4 H. L. 171; *London and Brighton Rail. Co.* v. *Truman* (1885), 11 App. Cas. 45; *Metropolitan Asylum District* v. *Hill*, *supra*, *per* Lord BLACKBURN, at p. 203.

(*c*) *Price's Patent Candle Co., Ltd.* v. *London County Council*, [1908] 2 Ch. 526, C. A., *per* COZENS-HARDY, M.R., at pp. 543, 544.

(*d*) *Vaughan* v. *Taff Vale Rail. Co.* (1860), 5 H. & N. 679; *Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Exch. 781; *Winch* v. *Thames Conservators* (1874), L. R. 9 C. P. 378, Ex. Ch.

(*e*) *Lawrence* v. *Great Northern Rail. Co.*, (1851) 16 Q. B. 643; *Mose* v. *St. Leonards Gas Co.* (1864), 4 F. & F. 324; *Kearney* v. *London and Brighton Rail. Co.* (1871), L. R. 6 Q. B. 759, Ex. Ch.; *Jolliffe* v. *Wallasey Local Board*, (1873) L. R. 9 C. P. 62; *Geddis Bann Reservoir (Proprietors)* (1878), 3 App. Cas. 430; *Bede Steamship Co.* v. *River Wear Commissioners*, [1907] 1 K. B. 310, C. A.

(*f*) *Mersey Docks and Harbour Board Trustees* v. *Gibbs*, (1866) L. R. 1 H. L. 93; *Hill* v. *Tottenham Urban District Council*, (1898) 79 L. T. 495; *Gilbert* v. *Trinity House Corporation* (1886), 17 Q. B. D. 795.

(*g*) *London and Brighton Rail. Co.* v. *Truman*, *supra*, *per* Lord HALSBURY, L.C., at p. 52; *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; *Goldberg & Son, Ltd.* v. *Liverpool Corporation* (1900), 82 L. T. 362, C. A.

(*h*) *Jones* v. *Festiniog Rail. Co.* (1868), L. R. 3 Q. B. 733.

(*i*) *Metropolitan Asylum District* v. *Hill*, *supra*; *Gas Light and Coke Co.* v. *St. Mary Abbott's, Kensington (Vestry)* (1885), 15 Q. B. D. 1, C. A.; *Sadler* v. *South Staffordshire and Birmingham District Steam Tramways Co.*, (1889) 23 Q. B. D. 17, C. A.; *Rapier* v. *London Tramways Co.*, [1893] 2 Ch. 588, C. A.; *Canadian Pacific Rail.* v. *Parke*, [1899] A. C. 535, P. C.; *Jordeson* v. *Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217, C. A.

SECT. 5. In Tort.

causes injury to an individual, the liability of the corporation depends upon the language of the statute imposing the duty in question (*j*); to render the injury actionable, the statute must impose a duty upon the corporation towards the person injured (*k*), and must not provide a special remedy (*l*) or in any other way (*m*) exclude a right of action.

Common law duties.

Where the duty is imposed upon a corporation, not by statute, but by common law, the corporation is liable for any breach of it in the same way as an individual (*n*).

Torts committed against corporation.

857. A corporation can sue for any tort (*a*), as, for instance, the malicious presenting of a petition for its winding up (*b*), in the same way as an individual (*c*), except for torts of a purely personal nature (*d*). Thus it may sue for a libel affecting its property (*e*), though not for a libel merely affecting personal reputation (*f*); and it can maintain an action for a libel reflecting on the management of its trade or business, and this without alleging or proving special damage. The words complained of must attack the corporation in the method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position (*g*).

Libel.

SECT. 6.—*Criminal Liability.*

Criminal liability.

858. By the general principles of the criminal law, if a matter is made a criminal offence it is essential that there should be something in the nature of *mens rea*, and therefore, in ordinary cases, a corporation aggregate cannot be guilty of a criminal offence (*h*).

(*j*) *Atkinson* v. *Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. D. 441, C. A.

(*k*) *Glossop* v. *Heston and Isleworth Local Board* (1879), 12 Ch. D. 102, C. A.; *Bateman* v. *Poplar District Board of Works* (No. 2) (1887), 37 Ch. D. 272; *The Bearn*, [1906] P. 48, C. A.; *Gibraltar Sanitary Commissioners* v. *Orfila* (1890), 15 App. Cas. 400, 411, P. C.; *Hardaker* v. *Idle District Council*, [1896] 1 Q. B. 335, C. A.; *Charman* v. *South Eastern Rail. Co.* (1888), 21 Q. B. D. 524, C. A.; *Dormont* v. *Furness Rail Co.* (1883), 11 Q. B. D. 496; *David* v. *Britannic Merthyr Coal Co.*, [1909] 2 K. B. 146, C. A., where the doctrine of common employment was held to be no defence.

(*l*) *Coe* v. *Wise* (1866), L. R. 1 Q. B. 711, Ex. Ch.; *Evans* v. *Manchester, Sheffield, and Lincolnshire Rail. Co.* (1887), 36 Ch. D. 626; *Robinson* v. *Workington Corporation*, [1897] 1 Q. B. 619, C. A.; compare *Wolverhampton New Waterworks Co.* v. *Hawkesford* (1859), 6 C. B. (N. S.) 336, *per* WILLES, J., at p. 356.

(*m*) *Davis* v. *Bromley Corporation*, [1908] 1 K. B. 170, C. A. But in such a case the duty may be enforced by mandamus (*ibid.*).

(*n*) *Black* v. *Christchurch Finance Co.*, [1894] A. C. 48, P. C.; *Evans* v. *Manchester, Sheffield, and Lincolnshire Rail. Co.*, *supra*, *per* KEKEWICH, J., at p. 633; compare *Hertfordshire County Council* v. *Great Eastern Rail. Co.*, [1909] W. N. 124, C. A.

(*a*) See the cases cited *infra*.

(*b*) *Quartz Hill Gold Mining Co.* v. *Eyre* (1883), 11 Q. B. D. 674, C. A.

(*c*) *Wallasey Local Board* v. *Gracey* (1887), 36 Ch. D. 593.

(*d*) *South Hetton Coal Co.* v. *North Eastern News Association*, [1894] 1 Q. B. 133, C. A., *per* LOPES, L.J., at p. 141.

(*e*) *Empire Type Setting Co. of New York* v. *Linotype Co.* (1898), 79 L. T. 8, C. A.; *Thorley's Cattle Food Co.* v. *Massam*, (1880) 14 Ch. D. 763, C. A.

(*f*) Compare *Metropolitan Saloon Omnibus Co.* v. *Hawkins* (1859), 4 H. & N. 87 (imputing insolvency) with *Manchester Corporation* v. *Williams*, [1891] 1 Q. B. 94 (charging a corporation with corruption).

(*g*) *South Hetton Coal Co.* v. *North Eastern News Association*, *supra*.

(*h*) *Pearks, Gunston & Tee, Ltd.* v. *Ward*, [1902] 2 K. B. 1. As to *mens rea* see title CRIMINAL LAW AND PROCEDURE.

SECT. 6. Criminal Liability.

Thus, it cannot be guilty of treason (*i*), or of felony (*k*), as for instance, murder or incest, although the individuals comprising it may be (*l*). It cannot be indicted for corruption (*m*), perjury (*n*), or crimes involving personal violence, as, for instance, riot or assault (*o*), or probably for an offence under the Foreign Enlistment Act, 1870 (*p*). Nor can a corporation be convicted as a rogue and vagabond for keeping a lottery (*a*). On the other hand a corporation may be indicted for libel or for nuisance (*b*); and wherever a duty is imposed by statute in such a way that a breach of the duty amounts to a disobedience of the law, then, if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence for which a corporation may be indicted, whether the statute refers in terms to corporations or not (*c*). This is so whether the breach of duty is a nonfeasance (*d*) or misfeasance (*e*).

Penalties.

859. Where the punishment for a crime is death or imprisonment, a corporation cannot be indicted for the crime; for it cannot undergo the punishment (*f*). But a corporation may be fined (*g*). Consequently, in the case of *quasi*-criminal offences, where certain acts are forbidden by law under a penalty, and possibly even under a personal penalty, such as imprisonment, at any rate, in default of payment of a fine, and where the offender is liable to a penalty whether he had any *mens rea* or not, and whether or not he intended to commit a breach of the law, a corporation, which, in fact, has done the act forbidden through its agent or servant, is responsible and liable to a penalty (*h*).

A corporation in liquidation cannot commit criminal maintenance,

(*i*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 32 b.

(*k*) *R.* v. *Birmingham and Gloucester Rail. Co.* (1842) 3 Q. B. 223, *per* PATTESON, J., at p. 232.

(*l*) *South Hetton Coal Co.* v. *North Eastern News Association*, [1894] 1 Q. B. 133, C. A., *per* LOPES, L.J., at p. 141.

(*m*) *Ibid.*

(*n*) *Wych* v. *Meal* (1734), 3 P. Wms. 310.

(*o*) *R.* v. *Birmingham and Gloucester Rail Co., supra.*

(*p*) 33 & 34 Vict. c. 90; the punishment for which is fine and imprisonment. A corporation has been held not to be indictable under the Foreign Enlistment Act, 1819 (59 Geo. 3, c. 69) (*Two Sicilies* (*King*) v. *Willcox* (1850), 1 Sim. (N. S.) 335, where the decision seems to have turned on the interpretation of the word "person" in the Act).

(*a*) *Hawke* v. *Hulton* (*E.*) *& Co., Ltd.*, [1909] 2 K. B. 93, decided on the Lotteries Act, 1823 (4 Geo. 4, c. 60), ss. 41, 67, where, however, the court intimated that the corporation might be proceeded against under s. 62 for the penalty imposed by s. 41.

(*b*) *Pharmaceutical Society* v. *London and Provincial Supply Association* (1880), 5 App. Cas. 857, *per* Lord BLACKBURN, at p. 870.

(*c*) *R.* v. *Tyler and International Commercial Co.*, [1891] 2 Q. B. 588, C. A., *per* BOWEN, L.J., at pp. 592, 593; and compare Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 2.

(*d*) *R.* v. *Birmingham and Gloucester Rail. Co., supra.*

(*e*) *R.* v. *Great North of England Rail. Co.*, (1846) 9 Q. B. 315.

(*f*) *Pharmaceutical Society* v. *London and Provincial Supply Association, supra, per* Lord BLACKBURN, at p. 869; *Whitfield* v. *South Eastern Rail. Co.*, (1858) E. B. & E. 115, *per* Lord CAMPBELL, C.J., at p. 121.

(*g*) *Ibid.*

(*h*) *Pearks, Gunston & Tee, Ltd.* v. *Ward*, [1902] 2 K. B. 1, *per* CHANNELL, J., at p. 11.

SECT. 6. Criminal Liability.

though it may under certain circumstances be responsible for the improper acts of its liquidator as its agent (*i*).

Where an act has been committed by a corporation for which it is criminally liable, proceedings cannot be taken against it at quarter sessions; and an indictment there found against a corporation, may be removed into the King's Bench Division by *certiorari* (*k*).

SECT. 7.—*Legal Proceedings.*

SUB-SECT. 1.—*In General.*

Capacity to sue.

860. Any corporation may institute legal proceedings (*l*). A corporation sole must sue in respect of matters pertaining to the corporation in his corporate capacity, or at least show clearly that he sues in his corporate capacity (*m*). A corporation aggregate must sue in its corporate name (*n*), unless it is specially authorised by statute to sue in some other name, as, for instance, the name of one of its officers (*o*).

Where a limited company is plaintiff, it may be ordered to give security for costs, if there is reason to believe that, if the defence is successful, the assets of the company will be insufficient to pay the defendant's costs (*a*). The fact that the company is in liquidation is sufficient reason, unless the contrary is proved (*b*).

A suit by a corporation aggregate will not become defective by reason of the death of one of its members (*c*).

Capacity to be sued.

861. A corporation may, as a general rule, be sued as though it were an individual (*d*). Thus, it may be sued on implied contracts, as, for instance, for money had and received (*e*), use and occupation of land (*f*), or tenancy from year to year (*g*); and it may plead the Statutes of Limitations (*h*).

Where a corporation has covenanted to make a payment out of its corporate funds only, an action on the covenant will lie against

(*i*) *Metropolitan Bank* v. *Pooley* (1885), 10 App. Cas. 210, *per* Lord SELBORNE, L.C., at p. 218.

(*k*) *R.* v. *Birmingham and Gloucester Rail. Co.*, (1842) 3 Q. B. 223; *R.* v. *Manchester Corporation* (1857), 7 E. & B. 453.

(*l*) 1 Roll. Abr. 513. As to actions by foreign corporations, see p. 393, *post.*

(*m*) Grant, Law of Corporations (1850), 635.

(*n*) See p. 307, *ante.*

(*o*) See *R.* v. *St. Katharine Dock Co.* (1832), 1 Nev. & M. (K. B.) 121.

(*a*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 278: see further title COMPANIES, Vol. V.

(*b*) *Northampton Coal, Iron and Waggon Co.* v. *Midland Waggon Co.* (1878), 7 Ch. D. 500, C. A.; *Pure Spirit Co.* v. *Fowler* (1890), 25 Q. B. D. 235. See also *Re Seventh East Central Building Society* (1884), 51 L. T. 109, where the official liquidator of a building society, who was applying to the court under Companies Act, 1862 (25 & 26 Vict. c. 89), s. 165, was ordered to give security.

(*c*) *Blackburn* v. *Jepson* (1823), 3 Swan. 132, 138.

(*d*) 1 Roll. Abr. 513; for exceptions, see *infra.* As to foreign corporations, see p. 393, *post.*

(*e*) *Hall* v. *Swansea Corporation* (1844), 5 Q. B. 526; *Jefferys* v. *Gurr* (1831), 2 B. & Ad. 833.

(*f*) *Finlay* v. *Bristol and Exeter Rail. Co.* (1852), 7 Exch. 409; *Lowe* v. *London and North Western Rail. Co.* (1852), 18 Q. B. 632.

(*g*) *Doe* d. *Pennington* v. *Taniere* (1848), 12 Q. B. 998.

(*h*) *Wych* v. *Meal* (1734), 3 P. Wms. 310; *Molloy* v. *Mutual Reserve Life Insurance Co.* (1906), 94 L. T. 756, C. A.

SECT. 7. Legal Proceedings.

the corporation whether it has funds or not, and it is not necessary to allege in pleading that corporate funds exist (*i*).

Where, however, an Act of Parliament imposes certain duties and obligations on a trading corporation for the benefit of its customers (viz. the reduction under certain circumstances of the price of the commodity dealt in), but without providing any penalty for default or any right of action at the suit of individual customers or persons aggrieved, no private individual has a right of action against the corporation in the event of its failing to comply with the provisions or requirements of the Act (*k*).

A corporation aggregate should be sued in its corporate name (*l*) unless it is specially authorised by statute to be sued in some other name (*m*).

Proof in bankruptcy.

862. A corporation is entitled to prove a debt in bankruptcy proceedings by the affidavit of a person duly authorised by a general power of attorney, and to vote in the choice of a trustee in bankruptcy by a person duly authorised by a special power of attorney, under its common seal (*a*).

Foreign corporations.

863. A foreign corporation may sue in this country in its corporate name (*b*), or by the name by which it is generally known in business in this country (*c*). But it must prove the fact of incorporation to the satisfaction of the jury (*d*).

Similarly, any foreign corporation may be sued in this country (*e*).

English directors of a foreign corporation may be restrained by injunction in the English courts from applying corporate funds in their hands towards the performance of any act which is not within the power of the corporation (*f*).

A foreign corporation having no branch office in this country cannot be wound up by the English courts under the Companies (Consolidation) Act, 1908 (*g*); but it is otherwise if its only offices and all its shareholders are in this country and all its assets are transmitted here (*h*).

(*i*) *Sunderland Marine Insurance Co.* v. *Kearney* (1851), 16 Q. B. 925.

(*k*) *Johnston and Toronto Type Foundry Co.* v. *Consumers' Gas Co. of Toronto*, [1898] A. C. 447, P. C., where the Act provided for the audit of the accounts of the corporation by the local authority.

(*l*) See p. 306, *ante*.

(*m*) *R.* v. *St. Katharine Dock Co.* (1832), 1 Nev. & M. (K. B.) 121.

(*a*) *Re Stephens, Ex parte Bank of England* (1818), 1 Swan. 10; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 21, 168; and Bankruptcy Rules, r, 3.

(*b*) *Henriques* v. *Dutch West India Co.* (1728), 2 Ld. Raym. 1532.

(*c*) *Ibid.* Where a foreign bank sued in a corporate name by which it was known, and the defendant pleaded that it was not a corporation, the court allowed the pleading to be amended by inserting the name of a director of the bank as nominal plaintiff, it appearing that the law of the foreign country permitted the bank to sue in his name (*La Banca Nazionale sede di Torino* v. *Hamburger* (1863), 2 H. & C. 330). As to foreign corporations, see further title COMPANIES, Vol. V.

(*d*) *National Bank of St. Charles* v. *De Bernales* (1825), 1 C. & P. 569.

(*e*) *Westman* v. *Aktiebolaget Ekmans Mekaniska Snickarefabrik* (1876), 1 Ex. D 237; *Bawtree* v. *Great North-Western Central Rail. Co.* (1898), 14 T. L. R. 448, C. A. As to service on foreign corporations, see p. 395, *post*.

(*f*) *Pickering* v. *Stephenson* (1872), L. R. 14 Eq. 322.

(*g*) *Re Lloyd Generale Italiano* (1885), 29 Ch. D. 219, decided upon Companies Act, 1862 (25 & 26 Vict. c. 89), s. 119.

(*h*) *Re Syria Ottoman Rail. Co.* (1904), 20 T. L. R. 217.

SECT. 7. Legal Proceedings.

Proceedings by members.

864. Where it is competent for a corporation as such to commence legal proceedings, such proceedings cannot be commenced by one or more of its individual members (*i*). So long as they have it in their power to commence an action in the name of the corporation, an action by such individual members in their proper names for the same purpose cannot be maintained, whether the subject matter of the action is a transaction which is merely voidable at the discretion of a majority of the members, or one which is absolutely illegal, or incapable of ratification by such majority (*k*). If the governing body of the corporation refuse to allow proceedings to be instituted in its name, such individual members may, at their own risk (*l*), make use of its name as plaintiff, provided that the matter is urgent (*m*).

It is competent for an individual member (*n*), suing either on his own behalf alone (*o*), or on behalf of himself and all other members of the corporation (*p*), to sue the corporation or its officers (*q*) in the following cases: (1) To prevent the corporation either commencing or continuing the doing of something which is beyond its powers (*r*); (2) To prevent the corporation carrying out something which purports to be a corporate act, but which is in fact an attempt by the majority of its members to practise fraud (*s*) or oppression (*t*) against the minority.

SUB-SECT. 2.—*Procedure.*

Writ of summons.

865. A writ of summons issued by a corporation should state the address of the corporation as its head office (*u*).

(*i*) *Foss* v. *Harbottle* (1843), 2 Hare, 461, *per* WIGRAM, V.-C., at p. 490; see also *Mozley* v. *Alston* (1847), 1 Ph. 790, 800; *Gray* v. *Lewis* (1873), 8 Ch. App. 1035, *per* JAMES, L.J., at p. 1050; *Burland* v. *Earle*, [1902] A. C. 83, 93, P. C.; *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84; and compare *Walker* v. *Christ's College* (*Warden and Fellows*) (1827), 1 Bli. (N. S.) 9, H. L.; *Towers* v. *African Tug Co.*, [1904] 1 Ch. 558, C. A.

(*k*) *Mozley* v. *Alston*, *supra*. The doctrine laid down in *Foss* v. *Harbottle*, *supra*, and *Mozley* v. *Alston*, *supra*, was approved in *Lord* v. *Copper Miners* (*Governor and Company*) (1848), 2 Ph. 740, where an individual member of a corporation brought an action on behalf of himself and all other the shareholders in the corporation except the defendants, who were the members of the governing body, complaining of various transactions done by the defendants and confirmed in each case by a majority of the shareholders, and although the plaintiff also made vague and general charges of fraud, it was held that the action was not maintainable.

(*l*) *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* (1879), 13 Ch. D. 310, C. A.

(*m*) *MacDougall* v. *Gardiner* (1875), 1 Ch. D. 13, C. A.

(*n*) His motives are immaterial (*Colman* v. *Eastern Counties Rail. Co.* (1846), 10 Beav. 1; *Seaton* v. *Grant* (1867), 2 Ch. App. 459; *Bloxam* v. *Metropolitan Rail. Co.* (1868), 3 Ch. App. 337.

(*o*) *Simpson* v. *Westminster Palace Hotel Co.* (1860), 8 H. L. Cas. 712.

(*p*) *Forrest* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1861), 4 De G. F. & J. 126; *Robson* v. *Dodds* (1869), L. R. 8 Eq. 301.

(*q*) The corporation must be made a defendant (*Bagshaw* v. *Eastern Union Rail. Co.* (1849), 7 Hare, 114).

(*r*) *Colman* v. *Eastern Counties Rail. Co.* (1846), 10 Beav. 1; *Tomkinson* v. *South Eastern Rail. Co.* (1887), 35 Ch. D. 675; *Clinch* v. *Financial Corporation*, (1868) 4 Ch. App. 117; and see *Russell* v. *Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474.

(*s*) *Menier* v. *Hooper's Telegraph Works* (1874), 9 Ch. App. 350; *Spokes v. Grosvenor Hotel Co.*, [1897] 2 Q. B. 124; *Burland* v. *Earle*, *supra*; *Atwool* v. *Merryweather* (1867), L. R. 5 Eq. 464, n.

(*t*) *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56, C. A., *per* LINDLEY, M.R., at p. 69.

(*u*) *Le Tailleur* v. *South Eastern Rail. Co.* (1877), 3 C. P. D. 18. In the case

SECT. 7. Legal Proceedings.

Where no special statutory provisions exist (*a*), every writ of summons issued against a corporation aggregate (*b*) may be served on the mayor or other head officer, or on the town clerk, clerk (*c*), treasurer, or secretary of such corporation (*d*).

In the case of a foreign corporation, service can only be effected without leave if it carries on business or resides in this country (*e*). The writ must be served on the proper officer (*f*); and service on a mere agent or servant will not be sufficient (*g*). The corporation may, however, by agreement, accept service in a particular manner or by a particular person (*h*). If a corporation does not reside in England, it is necessary to obtain leave (*i*) to serve it with notice of the writ (*j*).

Appearance.

Appearance must be entered by a solicitor (*k*), duly authorised in writing under the corporate seal (*l*). Proceedings for summary judgment under a specially indorsed writ (*m*) may be taken against a corporation (*n*).

Interrogatories.

866. Where a corporation is party to a cause or matter, any opposite party may obtain an order allowing him to deliver interrogatories to any member or officer of such corporation (*o*).

of a joint stock company registered under the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), the address is the registered office (*ibid.*, s. 62).

(*a*) All statutory modes of service are preserved (*Wood* v. *Anderston Foundry Co.* (1888), 36 W. R. 918). For the cases in which statutory provision is made, see titles COMPANIES, Vol. V.; INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES; RAILWAYS AND CANALS.

(*b*) This does not include a Colonial Government (*Sloman* v. *New Zealand Government* (1876), 1 C. P. D. 563, C. A.).

(*c*) This does not mean a clerk performing merely ministerial duties, but a head or principal clerk (*Mackereth* v. *Glasgow and South Western Rail. Co.* (1873), L. R. 8 Ex. Ch. 149).

(*d*) R. S. C., Ord. 9, r. 8; see title PRACTICE AND PROCEDURE.

(*e*) *Newby* v. *Colt's Patent Firearms Co.* (1872), L. R. 7 Q. B. 293; *Haggin* v. *Comptoir d'Escompte de Paris* (1889), 23 Q. B. D. 519, C. A.; *La Bourgogne*, [1899] A. C. 431; *Logan* v. *Bank of Scotland*, [1904] 2 K. B. 495, 498, C. A.; see also p. 312, *ante*.

(*f*) Every foreign corporation establishing a place of business within the United Kingdom must file with the Registrar of Companies the names and addresses of one or more persons authorised to accept service of process on its behalf, and any process is sufficiently served if addressed to any person whose name has been filed and left at or sent by post to the filed address (Companies (Consolidation) Act, 1908 (8 Edw. 7 c. 69), s. 274 (1) (2)).

(*g*) *Nutter* v. *Messageries Maritimes* (1885), 54 L. J. (Q. B.) 527; *Golding* v. *Order of La Sainte Union des Sacrées Cœurs* (1892), 67 L. T. 605, C. A.; *The Princess Clementine*, [1897] P. 18.

(*h*) *Montgomery* v. *Liebenthal*, [1898] 1 Q. B. 487, C. A.; and the agreement will stand even though the corporation become bankrupt (*Tharsis Sulphur and Copper Co.* v. *Société Industrielle et Commerciale de Métaux* (1889), 60 L. T. 924; *British Wagon Co.* v. *Gray*, [1896] 1 Q. B. 35, 37, C. A.).

(*i*) Under R. S. C., Ord. 11, r. 1.

(*j*) *Westman* v. *Aktiebolaget Ekmans Mekaniska Schnickarefabrik* (1876), 1 Ex. D. 237; *Scott* v. *Royal Wax Candle Co.* (1876), 1 Q. B. D. 404; see title PRACTICE AND PROCEDURE.

(*k*) *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 32 a; Bro. Abr. tit. Corporations, 28; and compare *Re London County Council and London Tramways Arbitration* (1897), 13 T. L. R. 254.

(*l*) *Arnold* v. *Poole Corporation* (1842), 4 Man. & G. 860; see p. 381, *ante*.

(*m*) R. S. C., Ord. 14.

(*n*) *Shelford* v. *Louth and East Coast Rail. Co.* (1879), 4 Ex. D. 317, C. A.; *Muirhead* v. *Direct United States Cable Co.* (1879), 27 W. R. 708.

(*o*) R. S. C., Ord. 31, r. 5.

SECT. 7. Legal Proceedings.

The proper person to answer such interrogatories is the secretary of the corporation (*p*); and an order will not be made requiring them to be answered by a member, unless it is shown that there is no officer capable of answering them, and that the member in question can do so (*q*). In this case notice of the application should be given to the member (*r*), though no notice need be given to an officer (*s*). The person answering the interrogatories must state all that is within his personal knowledge, and must get information from other servants of the corporation so far as such information has come to them in their capacity as such (*t*), and not otherwise (*a*). He may rely on a privilege personal to himself, if the order is directed to him personally (*b*), but not where the corporation is at liberty to answer by another officer (*c*). The answer, when made, is the answer of the corporation, so as to bind it as an admission (*d*).

Enforcing judgment.

867. A judgment against a corporation may be enforced by a writ of *fieri facias* or *elegit* (*e*), and its property is not protected merely by the fact that it is held for public purposes (*f*). In the case of wilful (*g*) disobedience to a judgment or order of the court, its property is liable to sequestration (*h*), as is also the property of its directors or other officers (*i*). The directors or officers are also liable to be attached (*k*), provided that the order disobeyed has been

(*p*) *Re Alexandra Palace Co.* (1880), 16 Ch. D. 58. But an interrogatory may be directed to the chairman (*Tannetta, Walker & Co.* v. *Newport (Alexandra) Dock Co.* (1890), 6 T. L. R. 325), or in case of doubt to "the proper officer" (*Chaddock* v. *British South Africa Co.*, [1896] 2 Q. B. 153, C. A.; *A.-G.* v. *North Metropolitan Tramways Co.*, [1892] 3 Ch. 70).

(*q*) *Berkeley* v. *Standard Discount Co.* (1879), 13 Ch. D. 97, C. A., where it was also held that the member could not insist on being paid his costs before answering.

(*r*) *Chaddock* v. *British South Africa Co.*, *supra.*

(*s*) *Ibid.*

(*t*) *Southwark Water Co.* v. *Quick* (1878), 3 Q. B. D. 315, C. A., *per* COTTON, L.J., at p. 321.

(*a*) *Welsbach Incandescent Gas Lighting Co.* v. *New Sunlight Incandescent Co.*, [1900] 2 Ch. 1, C. A.

(*b*) *Salford Corporation* v. *Lever* (1890), 24 Q. B. D. 695.

(*c*) *Swansea Corporation* v. *Quirk* (1879), 5 C. P. D. 106. For these courts, see title EXECUTION.

(*d*) *Chaddock* v. *British South Africa Co.*, *supra*; *Welsbach Incandescent Gas Lighting Co.* v. *New Sunlight Incandescent Co.*, *supra.*

(*e*) *Worral Waterworks Co.* v. *Lloyd* (1866), L. R. 1 C. P. 719; *Spokes* v. *Banbury* (1865), L. R. 1 Eq. 42. For the enforcement of judgments or orders against a corporation, see Yearly Practice of the Supreme Court, 1909, pp. 575 *et seq.*

(*f*) *Arnold* v. *Gravesend Corporation* (1856), 25 L. J. (CH.) 530; *A.-G.* v. *Wilkinson* (1860), 29 L. J. (CH.) 41; *Spokes* v. *Banbury Local Board of Health* (1865), 13 L. T. 428; *Jersey (Earl)* v. *Uxbridge Rural Sanitary Authority*, [1891] 3 Ch. 183; and compare *Re Hull, Barnsley and West Riding Junction Rail. Co.* (1889) 40 Ch. D. 119, 128, 130, C. A. For the rules relating to execution generally, see title EXECUTION.

(*g*) *Fairclough* v. *Manchester Ship Canal Co.*, [1897] W. N. 7, C. A.; see *A.-G.* v. *Walthamstow Urban District Council* (1895), 11 T. L. R. 533; *Lee* v. *Aylesbury Urban District Council* (1902), 19 T. L. R. 106. As to the discretion of the court see *Cocks* v. *Great Western Rail. Co.* (1886), 3 T. L. R. 92, C. A., *per* COTTON, L.J. at p. 93.

(*h*) R. S. C., Ord. 42, r. 31; see title EXECUTION.

(*i*) *Ibid.*

(*k*) *Ibid.*; see *Lewis* v. *Pontypridd etc. Rail. Co.* (1895), 11 T. L. R. 203, C. A.

SECT. 7. Legal Proceedings.

served on them personally (*l*), but the corporation itself cannot be attached (*m*). A judgment may also be enforced by mandamus against the corporation (*n*), and in some cases, by execution against its members (*o*). When the judgment or order against the corporation is for the recovery or payment of money, any officer of the corporation, whether present or past (*p*), may be orally examined as to the debts due to it, and as to its property and means (*q*).

Part VI.—Dissolution.

SECT. 1.—*Surrender.*

Requisites for surrender.

868. A corporation constituted by royal charter only may surrender its charter to the King for the purpose of effecting a dissolution (*r*); but unless such purpose is clearly shown it will not be thereby dissolved (*s*).

Where the nature of the corporation is such that each individual corporator has a definite interest in the capital or stock of the corporation, all the corporators must consent to the surrender (*a*).

The terms of the surrender, however, may be such as to effect a dissolution in fact (*b*), yet if there remains some purpose for which it may continue to exist it will remain a corporation (*c*).

A corporation is not necessarily dissolved by parting with all its property (*d*).

SECT. 2.—*Forfeiture.*

Causes of forfeiture.

869. A corporation may be dissolved by forfeiture for either misuse or abuse of its powers and privileges, and there is a tacit or implied condition annexed to all grants of incorporation to trading companies that the grant shall not be misused or abused, and that, if it is, the charter or franchise is forfeited (*e*). The Crown cannot reserve to itself in the charter any power to override or control this rule of law (*f*).

(*l*) *McKeown* v. *Joint Stock Institute, Ltd.*, [1899] 1 Ch. 671.

(*m*) *R.* v. *Guilford Corporation* (1666), T. Raym. 152; *Mackenzie* v. *Sligo and Shannon Rail. Co.* (1850), 9 C. B. 250; *London Corporation* v. *London Joint Stock Bank* (1881), 6 App. Cas. 393.

(*n*) *Worthington* v. *Hulton* (1865), L. R. 1 Q. B. 63; *Arnold* v. *Poole Corporation* (1842), 4 Man. & G. 860; and compare *R.* v. *Rippon Corporation* (1700), 1 Com. 86. As to mandamus, see generally title CROWN PRACTICE.

(*o*) As for example, under the Companies Clauses (Consolidation) Act, 1845 (8 & 9 Vict. c. 16); Chartered Companies Act, 1837 (7 Will. 4 & 1 Vict. c. 73). See further, title COMPANIES, Vol. V.

(*p*) *Société Générale du Commerce et de l'Industrie en France* v. *Farina* (*J. M.*) *& Co.*, [1904] 1 K. B. 794, C. A.

(*q*) R. S. C., Ord. 42, r. 32.

(*r*) Grant, Law of Corporations (1850), p. 46.

(*s*) *R.* v. *Grey* (1724), 8 Mod. Rep. 358. As to acceptance and enrolment of surrenders, see p. 319, *ante*.

(*a*) *Ward* v. *Society of Attornies* (1844), 1 Coll. 370, 379. As to the liquidation and winding-up of companies, see title COMPANIES, Vol. V.

(*b*) *R.* v. *Grey*, *supra*, *per* FORTESCUE, J., at p. 362.

(*c*) *Norwich's* (*Dean and Chapter*) *Case* (1598), 3 Co. Rep. 73 a, 74 b, 76 b.

(*d*) *Hayward* v. *Fulcher* (1627), W. Jo. 166.

(*e*) *Eastern Archipelago Co.* v. *R.* (1853), 2 E. & B. 856, Ex. Ch., *per* MARTIN, B., at p. 869.

(*f*) *Ibid.*, at p. 870.

SECT. 2. Forfeiture.

If a corporation be made for a particular purpose, and it divests itself of all rights, so that it cannot answer the purpose for which it was instituted, it is dissolved (*g*), and a corporation founded on a trust is forfeited if the trust be broken (*h*). The directions given in a charter of incorporation are equivalent to conditions upon which it is given, and where it is alleged that there has been a breach of a condition upon which incorporation has been granted, the question may be tried by *scire facias* in the King's Bench Division of the High Court of Justice (*i*).

Breach of conditions of incorporation.

Where a corporation intends to do an act which is not authorised by its constitution, and which, if done, would render it liable to a forfeiture, the court has jurisdiction to prevent the doing of the proposed act (*k*).

Seizure of liberties.

870. If a corporation is guilty of an offence amounting to a forfeiture, the King may seize the franchise into his hands (*l*). But, speaking generally, the seizure of the liberty of a corporation is not equivalent to the seizure of the corporation itself (*m*); and it has been held that a judgment, given in *quo warranto*, against a corporation "that the liberties thereof be seized into the King's hands" does not dissolve the corporation (*n*).

SECT. 3.—*Revocation.*

Revocation.

871. A charter may be wholly or partially revoked by a subsequent Act of Parliament or by the acceptance of a subsequent charter inconsistent with it (*o*). The Crown has no power to revoke or alter a charter of incorporation, after it has been validly made and accepted (*p*), without the consent of the original grantees or their successors, and not even then if the original grant was made under the authority of or confirmed by Parliament (*q*).

Where the Crown has granted a charter with the consent of the Lords and Commons in Parliament assembled, it can only be revoked or repealed by an Act of Parliament (*r*).

(*g*) *R.* v. *London Corporation* (1691), 12 Mod. Rep. 17, *per* HOLT, C.J., at p. 19.

(*h*) *Smith's* (*Sir James*) *Case* (1691), 4 Mod. Rep. 53, 58.

(*i*) *Eastern Archipelago Co.* v. *R.* (1853), 2 E. & B. 856, Ex. Ch. As to *scire facias*, see title CROWN PRACTICE.

(*k*) *Rendall* v. *Crystal Palace Co.* (1858), 4 K. & J. 326.

(*l*) *R.* v. *Ponsonby* (1755), 1 Ves. 1, 8.

(*m*) *R.* v. *London Corporation* (1691), Holt, (K. B.) 168.

(*n*) *Smith's* (*Sir James*) *Case, supra.* As to *quo warranto*, see title CROWN PRACTICE.

(*o*) *R.* v. *Massory* (1738), Andr. 295. Where by a majority of the members of a corporation it is resolved that the existing charter of incorporation should be surrendered and a new one obtained which essentially differs from the existing one, and also that the property of the existing corporation should be forthwith transferred to trustees for the new corporation when formed, and meanwhile for the existing corporation the court, on the application of any of the dissentient minority, may restrain the existing corporation from surrendering its charter or alienating its property or allowing its common seal to be used for any such purpose (*Ward* v. *Society of Attornies* (1844), 1 Coll. 370); see p. 397, *ante*.

(*p*) *R.* v. *Cambridge* (*Vice-Chancellor*) (1765), 3 Burr. 1647, *per* Lord MANSFIELD, at p. 1656.

(*q*) Grant, Law of Corporations (1850), p. 10.

(*r*) *Ibid.*, p. 33.

SECT. 3. Revocation.

An express provision in a charter that in case of non-compliance with the conditions on which the charter was granted, the Crown may revoke and make void the charter under the Great Seal or sign manual, does not exclude every other mode of revocation or annulment (*s*).

SECT. 4.—*Insufficiency of Members.*

Effect of insufficiency of members.

872. Where a corporation is unable by reason of the reduction of the number of its members to do what is necessary for the continuance of its existence, or for carrying out the objects for which it was created, it will not be thereby extinguished or dissolved, but only suspended; so that on a grant of a new charter to the dormant body the revived corporation may sue in respect of rights which had accrued to it before the new grant (*t*). The existing members, nevertheless continue to possess their former rights for their lives, but without power to perform the duties imposed upon them by the constitution (*u*). The corporation may, however, continue to exist for certain purposes, such as the holding of property and the payment of creditors (*x*).

Absence of integral part.

873. Where the charter of a corporation aggregate prescribes a time for the election or appointment of the head of the corporation and contains no provision for the old head continuing in office until a new head is chosen, the corporation will to that extent be dissolved if the head be not chosen by the prescribed time, and cannot afterwards proceed to an election (*a*). So, when an integral part of a corporation is gone, without whose existence the functions of the corporation cannot be exercised, and the corporation has no means of supplying that integral part, the corporation is dissolved, at least for certain purposes, and the Crown may revive all the rights which the corporation had and attach them to a new corporation (*b*). Where offices are vacant and a corporation cannot act for want of power to elect, the corporation is not dissolved, but is in abeyance or dormant, and may be revived by grant of a new charter; and in such a case the revived corporation will succeed to all the rights of the dormant one (*c*). Where a corporation has ceased to exist

(*s*) *Eastern Archipelago Co.* v. *R.* (1853), 2 E. & B. 856, Ex. Ch., *per* WILLIAMS, J., at p. 879, where the judge appeared to think that such a provision would probably be ineffectual inasmuch as the act of the Crown might be reviewed by the courts.

(*t*) *Colchester Corporation* v. *Brooke* (1846), 7 Q. B. 339; *Colchester Corporation* v. *Seaber* (1766), 3 Burr. 1866.

(*u*) *R.* v. *Hughes* (1828), 7 B. & C. 708, *per* Lord TENTERDEN, C.J., at p. 717.

(*x*) *Woodbridge Union Guardians* v. *Colneis Guardians* (1849), 13 Q. B. 269.

(*a*) *Banbury Corporation Case* (1716), 10 Mod. Rep. 346. As to municipal corporations, however, see p. 354, *ante*; and titles ELECTIONS; LOCAL GOVERNMENT.

(*b*) For instance, the right to sue on a bond given to the old corporation (*R.* v. *Pasmore* (1789), 3 Term Rep. 199, 241, 242. The general opinion of the judges in this case seems to be that the corporation was dissolved absolutely.

(*c*) *Colchester Corporation* v. *Seaber*, *supra*. Where the governors of a school had been incorporated by charter, but had ceased to exist by reason of the omission to fill vacancies as they occurred, a scheme was settled by the Court of Chancery, with the assent of the Crown, for the appointment of trustees of the property belonging to the charity, and to enable application for directions to be made from time to time to the judge in chambers, notice being given

SECT. 4. Insufficiency of Members.

in the sense that its chief offices have for a number of years been allowed to remain vacant, it need not be made a party to a suit concerning its affairs (*d*). If a corporation is composed of brothers and sisters and all the sisters are dead, all grants and acts by the brotherhood are void, for the sisterhood being dead the corporation is imperfect (*e*).

SECT. 5.—*By Legal Proceedings.*

Legal proceedings.

874. A corporation may be dissolved by judgment in *quo warranto* (*f*), or on proceedings on a *scire facias* (*g*).

Quo warranto.

A body corporate *de facto*, which takes upon itself to act as a body corporate, but which from some defect in its constitution cannot legally exercise the powers it affects to use, may be dissolved by a judgment in *quo warranto* (*h*). Where, however, a charter of incorporation exists and there appears to be nothing on its face to indicate that it has been invalidly granted, it is presumed to be good until the contrary is proved (*i*). So long as the constitution of a corporation subsists, the court will treat it as an existing body, notwithstanding that it may be open to the Attorney-General or the Crown to take proceedings for the purpose of setting the charter aside (*k*).

Scire facias.

Where, however, the validity of a charter is questioned, the proper method of annulling the charter and thus dissolving the corporation constituted thereby is by proceedings on a *scire facias* (*l*). Such proceedings may be taken when the charter has been obtained by fraud or misrepresentation (*m*) or where the Crown has granted a charter under a mistake as to facts, or under a misapprehension as to the construction or effect of the charter (*n*), or where the Crown has exceeded its powers (*o*). A subject whose rights are affected by a franchise or charter granted to a corporation may, as of right, procure the cancellation or forfeiture of the charter by *scire facias* (*p*); for the prerogative of the Crown is the privilege of, and may be used by, the subject on the fiat of the Attorney-General (*q*).

to the Attorney-General (*Re Conyer's Free Grammar School at Yarm* (1853), 10 Hare, Appendix I., p. v.).

(*d*) *Dangars* v. *Rivaz* (1860), 28 Beav. 233.

(*e*) 1 Roll. Abr., p. 514.

(*f*) *R.* v. *Amery* (1787), 1 Term Rep. 575, *per* ASHHURST, J., at p. 584.

(*g*) To every Crown grant there is annexed by the common law an implied condition that it may be repealed by *scire facias* by the Crown (*Eastern Archipelago Co.* v. *R.* (1853), 2 E. & B. 856, Ex. Ch., *per* JERVIS, C.J., at p. 914). As to *quo warranto* and *scire facias*, see title CROWN PRACTICE.

(*h*) *R.* v. *Pasmore* (1789) 3 Term Rep. 199, *per* ASHHURST, J., at p. 244.

(*i*) Grant, Law of Corporations (1850), p. 40.

(*k*) *Robinson* v. *London Hospital Governors* (1852), 10 Hare, 19, 24.

(*l*) *R.* v. *Boucher* (1842), 3 Q. B. 641, *per* Lord DENMAN, C.J., at p. 657.

(*m*) *Ibid.*; *La Banque d' Hochelaga* v. *Murray* (1890), 15 App. Cas. 414, P. C.

(*n*) Grant, Law of Corporations (1850), p. 21.

(*o*) *Eastern Archipelago Co.* v. *R.*, *supra*; see p. 315, *ante*.

(*p*) *Ibid.*, *per* CRESSWELL, J., at p. 886; and see *R.* v. *Pasmore*, *supra*, *per* ASHHURST, J., at p. 244.

(*q*) *Eastern Archipelago Co.* v. *R.*, *supra*, *per* JERVIS, C.J., at p. 914; and see *Portal* v. *Emmens* (1876), 1 C. P. D. 664, C. A.

Where the charter sought to be repealed is under the seal of the duchy of Lancaster, the proper court in which *scire facias* should be brought appears to be the Chancery Court of the duchy (*r*).

SECT. 6.—*Effect of Dissolution.*

Effect of dissolution.

875. Where a corporation has been dissolved, its members, in their natural capacities, can neither recover debts which were due to the corporation nor be charged with debts contracted by it (*s*). Personal privileges, however, granted to individual members of a corporation will not necessarily be destroyed by the dissolution of the corporation or the surrender of its liberties (*t*).

Lands belonging to a corporation which has been dissolved do not escheat to the Crown or anyone else, but revert to the original donor (*a*) because the original grant has failed (*b*). Thus, in the case of a lease held by a corporation, the effect of dissolution is to terminate the lease by acceleration of the reversion in favour of the lessor, and the Crown is not entitled to take as *bona vacantia* (*c*).

All franchises enjoyed by the corporation revert to the Crown (*d*). Personal chattels held in trust for an extinct corporation, vest as *bona vacantia* in the Crown (*e*); and as regards pure personalty it is probable that the same principle would apply (*f*).

It has been stated that where a charter has been declared by Act of Parliament to be void, all acts done under it are void also unless a contrary intention appears from the Act (*g*).

(*r*) *Liverpool Corporation* v. *Chancellor of the County Palatine of Lancaster* (1712), cited 1 Str. 151.

(*s*) *Naylor* v. *Cornish* (1684), 1 Vern. 311, note (1); *Edmunds* v. *Brown* (1668), 1 Lev. 237 (bond signed by individual members).

(*t*) *Leight* v. *Pym* (1686), 2 Lut. 1329.

(*a*) *A.-G.* v. *Gower* (*Lord*) (1740), 9 Mod. Rep. 224, *per* Lord HARDWICKE, L. C., at p. 226; Co. Litt. 13 b; and see p. 373, *ante*.

(*b*) *Hastings Corporation* v. *Letton*, [1908] 1 K. B. 338, *per* DARLING, J., at p. 384, citing 1 Bl. Com. 484.

(*c*) *Hastings Corporation* v. *Letton*, *supra*, a case of dissolution under ss. 142 and 143 of the Companies Act, 1862 (25 & 26 Vict. c. 89), where the court noted the distinction between chattels real and pure personalty.

(*d*) *Colchester Corporation* v. *Brooke* (1846), 7 Q. B. 339, *per* Lord DENMAN, C.J., at p. 386.

(*e*) *Re Higginson and Dean, Ex parte A.-G.*, [1899] 1 Q. B. 325, where, a corporation having proved in a bankruptcy and many years after its dissolution further assets having been discovered belonging to the bankrupt's estate, the official receiver, as trustee in the bankruptcy, was held to be a trustee for the Crown of that portion of those assets which the corporation, but for its dissolution, would have been entitled to receive. As to *bona vacantia*, see title CONSTITUTIONAL LAW, Vol. VII., p. 209.

(*f*) Kyd on Corporations (1793), Vol. II., p. 516; Grant, Law of Corporations (1850), p. 304; compare *Re Ruddington Land* (1909), 78 L. J. (CH.) 378.

(*g*) Grant, Law of Corporations (1850), p. 39.

CORPOREAL HEREDITAMENT.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

CORPSE.

See BURIAL AND CREMATION; CRIMINAL LAW AND PROCEDURE; EXECUTORS AND ADMINISTRATORS.

CORRUPTION.

See CRIMINAL LAW AND PROCEDURE.

CORRUPT PRACTICES.

See ELECTIONS.

COSTS.

See COUNTY COURTS; PRACTICE AND PROCEDURE; SOLICITORS; AND TITLES *passim*.

COST-BOOK MINE.

See COMPANIES; MINES, MINERALS AND QUARRIES.

CO-SURETIES.

See GUARANTEE.

COUNCILLORS.

See LOCAL GOVERNMENT.

COUNSEL.

See BARRISTERS.

COUNTERCLAIM.

See SET-OFF AND COUNTERCLAIM.

COUNTERFEITING.

See CRIMINAL LAW AND PROCEDURE.

COUNTERPART.

See DEEDS AND OTHER INSTRUMENTS; LANDLORD AND TENANT.

COUNTY BRIDGE.

See LOCAL GOVERNMENT.

COUNTY COUNCIL.

See LOCAL GOVERNMENT.

COUNTY COURTS.

PAGE

PART I. COURTS, JUDGES, AND OFFICERS - - - - 410

SECT. 1. COURTS - - - - - - - - - - - 410

Sub-sect. 1. In General - - - - - - - - 410
Sub-sect. 2. Districts - - - - - - - - 411
Sub-sect. 3. Local Jurisdictions - - - - - - 412
Sub-sect. 4. Times of Sitting - - - - - - 412
Sub-sect. 5. Buildings and Incidental Expenses - - - 414

SECT. 2. JUDGES - - - - - - - - - - 414

Sub-sect. 1. Appointment and Effect thereof; Removal - 414
Sub-sect. 2. Deputies - - - - - - - - 416
Sub-sect. 3. Salaries and Pensions - - - - - 417

SECT. 3. REGISTRARS - - - - - - - - - - 417

Sub-sect. 1. Appointment and Effect thereof; Removal - 417
Sub-sect. 2. Duties and Powers - - - - - - 418
Sub-sect. 3. Joint Registrars and Deputies - - - - 419
Sub-sect. 4. Salaries - - - - - - - - 420

SECT. 4. BAILIFFS - - - - - - - - - - 421

Sub-sect. 1. Appointment of High Bailiff and Bailiffs - 421
Sub-sect. 2. Duties - - - - - - - - - 422
Sub-sect. 3. Salary - - - - - - - - - 422

SECT. 5. TREASURERS - - - - - - - - - - 423

SECT. 6. LIABILITIES AND PROTECTION OF OFFICERS - - - 423

Sub-sect. 1. Liabilities of Officers Generally - - - 423
Sub-sect. 2. Liabilities of High Bailiff - - - - 425
Sub-sect. 3. Protection of Officers - - - - - 426

PART II. JURISDICTION AND LAW - - - - - - - 428

SECT. 1. ORDINARY JURISDICTION OF COUNTY COURT - - 428

Sub-sect. 1. In General - - - - - - - - 428
Sub-sect. 2. Exceptions to the Ordinary Jurisdiction - - 430
Sub-sect. 3. Jurisdiction under the Judicature Acts - - 432
Sub-sect. 4. Jurisdiction by Consent - - - - - 434

SECT. 2. JURISDICTION IN ACTIONS AFFECTING REAL PROPERTY - 435

Sub-sect. 1. Ejectment - - - - - - - - 435
Sub-sect. 2. Recovery of Possession - - - - - 436
Sub-sect. 3. Where Title in Question - - - - - 438

SECT. 3. REMITTED ACTIONS - - - - - - - - 438

Sub-sect. 1. Actions of Contract - - - - - 438
Sub-sect. 2. Actions of Tort - - - - - - - 441
Sub-sect. 3. Equitable Actions - - - - - - 442
Sub-sect. 4. Interpleader Proceedings - - - - - 443

SECT. 4. PROCEEDINGS IN EQUITY - - - - - - - 443

Sub-sect. 1. In General - - - - - - - - 443
Sub-sect. 2. Transfer of Equitable Actions to Chancery Division - - - - - - - - 446

SECT. 5. BILLS OF EXCHANGE ACT, 1855 - - - - - 447

PAGE

PART III. PROCEDURE BEFORE TRIAL - - - - - - 448

SECT. 1. COMMENCEMENT OF ACTION - - - - - - - 448

Sub-sect. 1. District for Commencement of Ordinary Actions 448
Sub-sect. 2. District for Commencement of Equity Actions - 452
Sub-sect. 3. Parties - - - - - - - - - - 453
Sub-sect. 4. Joinder of Causes of Action - - - - 458
Sub-sect. 5. Abandonment of Excess - - - - - 459

SECT. 2. SUMMONS AND SERVICE - - - - - - - - 460

Sub-sect. 1. Plaint and Summons - - - - - 460
Sub-sect. 2. Particulars and Statement of Claim - - - 466
Sub-sect. 3. Service - - - - - - - - - 468
Sub-sect. 4. Special Duties of Bailiff as to Service - - 475
Sub-sect. 5. Service out of England and Wales - - - 477
Sub-sect. 6. Summons and Service under Bills of Exchange Act, 1855 - - - - - - - - - 479
Sub-sect. 7. Infants and Persons of Unsound Mind - - 479

SECT. 3. PETITION AND SERVICE - - - - - - - - 481

SECT. 4. CONSOLIDATION, STAY, AND TRANSFER OF ACTIONS - 481

Sub-sect. 1. Consolidation and Stay of Actions - - - 481
Sub-sect. 2. Transfer of Actions - - - - - - 482
Sub-sect. 3. Transfer for Trial of Actions under extended Jurisdiction - - - - - - - 483

SECT. 5. DEFENCE AND COUNTERCLAIM - - - - - 485

Sub-sect. 1. Notices of Defence - - - - - - 485
Sub-sect. 2. Defence in Actions under Bills of Exchange Act, 1855 - - - - - - - - 489
Sub-sect. 3. Objection to the Jurisdiction - - - - 489
Sub-sect. 4. Set-off and Counterclaim - - - - 491

SECT. 6. CONTRIBUTION AND INDEMNITY - - - - - 491

SECT. 7. PAYMENT INTO AND OUT OF COURT - - - - 493

Sub-sect. 1. In General - - - - - - - 493
Sub-sect. 2. Payment out of Court - - - - - 497
Sub-sect. 3. Payment into Court in Cases of Infants and Lunatics - - - - - - - - 497
Sub-sect. 4. Payment in Transfer and Investment by Trustees and Others - - - - - - - 497
Sub-sect. 5. Investment and Payment out of Funds - - 499

SECT. 8. DISCONTINUANCE; CONFESSION AND ADMISSIONS - - 500

Sub-sect. 1. Discontinuance - - - - - - 500
Sub-sect. 2. Confession and Admissions - - - - 500

SECT. 9. INTERLOCUTORY APPLICATIONS AND ORDERS - - - 502

Sub-sect. 1. Special Applications - - - - - 502
Sub-sect. 2. Receiver - - - - - - - 505
Sub-sect. 3. Application for Directions - - - - 506
Sub-sect. 4. Practice generally on Interlocutory Applications - - - - - - - - - 507

SECT. 10. AMENDMENT - - - - - - - - - 508

Sub-sect. 1. Amendment in General - - - - - 508
Sub-sect. 2. Amendment of Parties - - - - - 509
Sub-sect. 3. Change of Parties - - - - - - 511

SECT. 11. EVIDENCE BEFORE TRIAL - - - - - - 513

Sub-sect. 1. Interrogatories and Discovery of Documents - 513
Sub-sect. 2. Notices to Admit and Produce - - - 516
Sub-sect. 3. Examination before Trial - - - 516
Sub-sect. 4. Affidavits - - - - - - - - 518

PART III. PROCEDURE BEFORE TRIAL—*continued.* PAGE

SECT. 12. JURY AND ASSESSORS - - - - - - - - 520
Sub-sect. 1. Jury - - - - - - - - - 520
Sub-sect. 2. Assessors - - - - - - - - 523
SECT. 13. ARBITRATION - - - - - - - - - 525

PART IV. TRIAL, JUDGMENT, AND EXECUTION - - - 525
SECT. 1. PERSONS QUALIFIED TO PRACTISE - - - - - 525
SECT. 2. NON-APPEARANCE OF PARTIES - - - - - 526
SECT. 3. HEARING - - - - - - - - - - 528
Sub-sect. 1. Powers of Judge and Registrar - - - 528
Sub-sect. 2. Witnesses - - - - - - - - 529
Sub-sect. 3. Proceedings in Court - - - - - 531
SECT. 4. JUDGMENT - - - - - - - - - - 533
Sub-sect. 1. In General - - - - - - - - 533
Sub-sect. 2. Judgment under Bills of Exchange Act, 1855 - 538
Sub-sect. 3. Nonsuit - - - - - - - - - 538
Sub-sect. 4. Time for Payment and Instalments - - - 539
Sub-sect. 5. Accounts and Inquiries - - - - - 540
Sub-sect. 6. Judgment for or against Executors and Administrators - - - - - - - - 546
Sub-sect. 7. Registry of Judgments - - - - - 547
SECT. 5. NEW TRIAL - - - - - - - - - - 548
SECT. 6. EXECUTION - - - - - - - - - - 550
Sub-sect. 1. In General - - - - - - - - 550
Sub-sect. 2. Execution against Goods - - - - 551
Sub-sect. 3. Where Leave required - - - - - 553
Sub-sect. 4. The Warrant - - - - - - - 555
Sub-sect. 5. Execution against a Partnership - - - 556
Sub-sect. 6. Effect and Execution of the Warrant - - 557
Sub-sect. 7. Removal of Judgment into High Court - - 560
Sub-sect. 8. Setting Aside or Stay of Execution - - 560
Sub-sect. 9. Prior Claims for Rent and Taxes - - - 563
Sub-sect. 10. Sale under Execution - - - - - 564
Sub-sect. 11. Execution out of the Jurisdiction - - - 567
Sub-sect. 12. Recovery of Possession of Land - - - 568
Sub-sect. 13. Recovery of Specific Chattels - - - - 569
SECT. 7. ATTACHMENT OF DEBTS - - - - - - - 570
SECT. 8. ATTACHMENT FOR DISOBEDIENCE OF ORDERS - - 577

PART V. COSTS - - - - - - - - - - - - 578
SECT. 1. GENERAL PRINCIPLES - - - - - - - - 578
Sub-sect. 1. Discretion of Judge - - - - - - 578
Sub-sect. 2. Scales of Costs, and Discretion of Judge thereto 580
Sub-sect. 3. Discretion as to particular Items - - - 582
SECT. 2. COSTS OF PARTIES NOT EMPLOYING A SOLICITOR - - 583
SECT. 3. COSTS WHERE A SOLICITOR IS EMPLOYED - - - 583
Sub-sect. 1. Costs between Party and Party - - - 583
Sub-sect. 2. Costs between Solicitor and Client - - - 585
SECT. 4. REMITTED ACTIONS - - - - - - - - 586
SECT. 5. PARTICULAR CASES - - - - - - - - 588
Sub-sect. 1. Equitable Actions and Matters - - - 588
Sub-sect. 2. Actions under the extended Jurisdiction - 590
Sub-sect. 3. Third Parties - - - - - - - 590

PART V. COSTS—*continued.*

SECT. 5. PARTICULAR CASES—*continued.* PAGE

Sub-sect. 4. Detinue - - - - - - - - 591
Sub-sect. 5. Ejectment and Real Property Actions - - 591
Sub-sect. 6. Injunctions - - - - - - - - 592
Sub-sect. 7. Miscellaneous Proceedings - - - - 592
Sub-sect. 8. Actions tried by Consent - - - - 594
Sub-sect. 9. Counsel's Fees - - - - - - 594
Sub-sect. 10. Witnesses' Allowances - - - - - 595

SECT. 6. TAXATION AND REVIEW - - - - - - - 597

Sub-sect. 1. Taxation - - - - - - - - 597
Sub-sect. 2. Review of Taxation - - - - - - 599

SECT. 7. RECOVERY OF COSTS - - - - - - - - 600

SECT. 8. SECURITY FOR COSTS - - - - - - - - 600

PART VI. APPEALS - - - - - - - - - - - - 601

SECT. 1. APPEALS - - - - - - - - - - 601

Sub-sect. 1. Cases in which an Appeal lies - - - - 601
Sub-sect. 2. Procedure leading to Appeal - - - - 604
Sub-sect. 3. Hearing of Appeals - - - - - - 607

SECT. 2. CERTIORARI - - - - - - - - - - 610

SECT. 3. PROHIBITION - - - - - - - - - - 611

SECT. 4. MANDAMUS - - - - - - - - - - 614

PART VII. GENERAL POWERS AND REGULATIONS - - 615

SECT. 1. CONTEMPT IN OPEN COURT - - - - - - - 615

SECT. 2. RULES AND FORMS - - - - - - - - 617

SECT. 3. FEES - - - - - - - - - - - - 618

SECT. 4. SERVICE, TIME, NOTICES AND SEAL - - - - 619

SECT. 5. CONSTRUCTION - - - - - - - - - 621

PART VIII. JURISDICTION UNDER SPECIAL STATUTES - - 622

SECT. 1. INTRODUCTORY - - - - - - - - - 622

Sub-sect. 1. Special Powers of Judges and Registrars - - 622
Sub-sect. 2. Procedure - - - - - - - - 624

SECT. 2. AGRICULTURAL HOLDINGS ACT, 1908 - - - - 625

Sub-sect. 1. Jurisdiction - - - - - - - - 625
Sub-sect. 2. Procedure in general - - - - - - 626
Sub-sect. 3. Procedure on Application for Statement of Special Case - - - - - - - - - 626
Sub-sect. 4. Procedure on Statement of a Case - - - 627
Sub-sect. 5. Procedure for Removal of Arbitrator or to set aside Award - - - - - - - 628
Sub-sect. 6. Procedure for Recovery of Money or Settlement of a Dispute as to a Distress - - - 630
Sub-sect. 7. Procedure for Appointment etc. of Guardians - 630
Sub-sect. 8. Costs - - - - - - - - - 631
Sub-sect. 9. Appeal - - - - - - - - - 631

SECT. 3. ALKALI ETC. WORKS REGULATION ACT, 1906 - - 631

SECT. 4. ALLOTMENTS COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887 - - - - - - - - 633

SECT. 5. ALLOTMENTS EXTENSION ACT, 1882 - - - - 634

SECT. 6. ARMY ACT, 1881 - - - - - - - - - 634

PAGE

PART VIII. JURISDICTION UNDER SPECIAL STATUTES—*continued.*

SECT. 7. BALLOT ACT, 1872 - - - - - - - - 635
SECT. 8. BRINE PUMPING (COMPENSATION FOR SUBSIDENCE) ACT, 1891 - - - - - - - - - - 636
SECT. 9. BUILDING SOCIETIES ACT, 1874 - - - - - - 637
SECT. 10 CHARITABLE TRUSTS ACTS, 1853 TO 1891 - - - 640
SECT. 11. COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES ACT, 1896 - - - - - - - 643
SECT. 12. COMMONS ACT, 1876 - - - - - - - - 643
SECT. 13. COURT OF PROBATE ACTS, 1857 AND 1858 - - - 644
SECT. 14. EMPLOYERS AND WORKMEN ACT, 1875 - - - 646
SECT. 15. EXTRAORDINARY TITHE REDEMPTION ACT, 1886 - - 647
SECT. 16. FACTORY AND WORKSHOP ACT, 1901 - - - 648
SECT. 17. FINANCE ACT, 1899 - - - - - - - - 648
SECT. 18 FINES AND RECOVERIES ACT, 1833; MARRIED WOMEN'S REVERSIONARY INTERESTS ACT, 1857 - - - 650
SECT. 19. FRIENDLY SOCIETIES ACT, 1896 - - - - - 651
SECT. 20. GOVERNMENT ANNUITIES ACTS, 1864 AND 1882 - - 653
SECT. 21. GUARDIANSHIP OF INFANTS ACT, 1886 - - - 654
SECT. 22. HIGHWAYS LOCOMOTIVES (AMENDMENT) ACT, 1878 - 655
SECT. 23. HOSIERY MANUFACTURE (WAGES) ACT, 1874 - - 655
SECT. 24. HOUSING OF THE WORKING CLASSES ACTS, 1890 AND 1903 - - - - - - - - - - - 656
SECT. 25. INCLOSURE ETC. EXPENSES ACT, 1868 - - - - 656
SECT. 26. INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893 - 657
SECT. 27. INEBRIATES ACTS, 1879 TO 1899 - - - - 659
SECT. 28. JUDICIAL TRUSTEES ACT, 1896 - - - - - 660
SECT. 29. LAW OF DISTRESS (AMENDMENT) ACTS, 1888 AND 1895 661
SECT. 30. LICENSING ACT, 1904 - - - - - - - - 662
Sub-sect. 1. Jurisdiction - - - - - - - - 662
Sub-sect. 2. Procedure in References from Quarter Sessions 663
Sub-sect. 3. Procedure on Application to Appoint a Receiver 664
SECT. 31. LITERARY AND SCIENTIFIC INSTITUTIONS ACT, 1854 - 665
SECT. 32. LOAN SOCIETIES ACT, 1840 - - - - - - 666
SECT. 33. LOCAL LOANS ACT, 1875 - - - - - - 666
SECT. 34. LONDON BUILDING ACT, 1894 - - - - - 667
SECT. 35. LUNACY ACT, 1890 - - - - - - - - 669
SECT. 36. MARRIED WOMEN'S PROPERTY ACT, 1882 - - - 670
SECT. 37. MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884 - - - - - - - 671
SECT. 38. OPEN SPACES ACT, 1906 - - - - - - - 672
SECT. 39. PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT, 1875; LOCAL GOVERNMENT ACT, 1888 - - 673
Sub-sect. 1. Jurisdiction - - - - - - - - 673
Sub-sect. 2. Procedure - - - - - - - - 673
Sub-sect. 3. Costs and Appeal - - - - - - - 674
SECT. 40. PARTITION ACTS, 1868 AND 1876 - - - - 675
SECT. 41. PHARMACY ACTS, 1852 AND 1868 - - - - 676

PAGE

PART VIII. JURISDICTION UNDER SPECIAL STATUTES—*continued.*

SECT. 42. POOR LAW AMENDMENT ACT, 1848 - - - - 676
SECT. 43. PRIVATE STREET WORKS ACT, 1892 - - - - 677
SECT. 44. PUBLIC HEALTH ACT, 1875; PUBLIC HEALTH (LONDON) ACT, 1895 - - - - - - - - - 677
SECT. 45. PUBLIC TRUSTEE ACT, 1906 - - - - - 679
SECT. 46. RIOT (DAMAGES) ACT, 1886 - - - - - 680
SECT. 47. RIVERS POLLUTION PREVENTION ACTS, 1876 AND 1893 - 680
SECT. 48. SALE OF EXHAUSTED PARISH LANDS ACT, 1876 - - 682
SECT. 49. SETTLED LAND ACTS, 1882 TO 1890 - - - - 684
SECT. 50. SMALL DWELLINGS ACQUISITION ACT, 1899 - - - 685
SECT. 51. SOLICITORS ACT, 1870 - - - - - - - 686
SECT. 52. STANNARIES COURT (ABOLITION) ACT, 1896 - - - 686
SECT. 53. SUCCESSION DUTY ACT, 1853 - - - - - 687
SECT. 54. TELEGRAPH ACTS, 1863 AND 1878 - - - - 688
SECT. 55. TITHE ACT, 1891 - - - - - - 690
SECT. 56. TRUSTEE ACT, 1893 - - - - - - - 691

For Admiralty Jurisdiction - - - *See title* ADMIRALTY.
Company Jurisdiction - - - ,, COMPANIES.
Courts Generally - - - - ,, COURTS.
Jurisdiction in Bankruptcy and under the Debtors Act - - - ,, BANKRUPTCY AND INSOLVENCY.
Liverpool Court of Passage - - ,, COURTS.
Mayor's Court of London - - - ,, MAYOR'S COURT, LONDON.
Practice and Procedure in High Court ,, PRACTICE AND PROCEDURE.
Salford Hundred Court - - - ,, COURTS.

Part I.—Courts, Judges, and Officers.

SECT. 1.—*Courts.*

SUB-SECT. 1.—*In General.*

Constitution of county courts.

876. The county court as at present constituted is a creature of statute, and as such was established by the County Courts Act, 1846 (*a*). Its jurisdiction was much enlarged and its practice was

(*a*) 9 & 10 Vict. c. 95. The preamble to this Act states very usefully the prior legislation on the subject. At common law there originally existed a local county court exercising a considerable jurisdiction in respect of land and small debts. It fell into disuse from the time of Henry II. owing to the establishment of assize courts. From the reign of James I. onwards efforts were made to supply its place by the creation of local small debt courts, under the name of "courts of request," and these courts were made the basis of the statutory county court dating from 1846. For the local small debt courts still existing, see title COURTS.

amended by a series of subsequent County Court Acts (*b*), which were in turn consolidated and amended by the County Courts Act, 1888 (*c*). A further extension of jurisdiction was effected by the County Courts Act, 1903 (*d*). Any jurisdiction or powers possessed by the old courts for the recovery of debts or demands, upon which the present county court system is based, have been preserved, and, though an inferior court, the county court is a court of record (*e*).

SUB-SECT. 2.—*Districts.*

Districts.

877. The Executive by Order in Council may determine what courts may be established, where they may be held, and over what district the jurisdiction of such courts may in each case extend (*f*). The county court districts are now defined by reference to unions and parishes as constituted and limited on April 1st, 1898, and every parish and nearly every urban district is brought within the boundaries of a single county court district (*g*). For certain purposes the districts of the courts of the metropolis and the City of London Court are treated as one district (*h*), and the former are styled "metropolitan courts" (*i*).

Alteration of districts.

The Executive by Order in Council may alter the number and boundaries of the districts and the place of holding any court, and order the discontinuance of the holding of any court, and order the consolidation of any two or more districts and the division of any district, and may order by what name and in what towns and places a court shall be held in such district (*k*). Any such Order in Council must be published in the *London Gazette* (*l*). The Lord

(*b*) As these were consolidated by the Act of 1888 they are not set out in full, but may be found in the Yearly County Courts Practice, 1909, Vol. I., p. 2.

(*c*) 51 & 52 Vict. c. 43.

(*d*) 3 Edw. 7, c. 42, which raised the limit of jurisdiction from £50 to £100; see p. 428, *post*. The limits of the present jurisdiction of the county court may be thus shortly summarised.

Common Law actions and matters	£100
Equity ,, ,, ,, ...	£500
Admiralty ,, ,, ,, ...	£300

Bankruptcy (where a court has bankruptcy jurisdiction) unlimited. As to special statutory jurisdictions, see pp. 622 *et seq.*, *post*.

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 5, 188 (4) (a); *Levy* v. *Moylan* (1850), 10 C. B. 189; *Owens* v. *Breese* (1851), 6 Exch. 916, Ex. Ch.

(*f*) County Courts Act, 1846 (9 & 10 Vict. c. 95), s. 2. The districts already existing were confirmed by the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 3.

(*g*) Numerous Orders in Council were made from time to time, but by Orders dated respectively March 7, April 19, and July 14, 1899, all the existing Orders were consolidated.

(*h*) See County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 84; and p. 448, *post*.

(*i*) The metropolitan courts are Bloomsbury, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, Whitechapel, and, by virtue of the County Court Rules, Ord. 55, Bow. By an Order in Council dated November 21, 1908, the Brompton County Court is styled the West London (Brompton) County Court of Middlesex. For the City of London Court see *infra*.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 4. A part of any county, liberty, city, borough or district may, in such an order, be declared to be within the jurisdiction of an adjoining county or district (*ibid.*).

(*l*) *Ibid.*, s. 174.

SECT. 1. Courts.

Chancellor has power to direct that there shall be two judges for one district, each with the powers of a single judge (*m*), and has power to redistribute districts among the judges (*n*).

City of London Court.

878. The City of London Court (*o*), for purposes of jurisdiction, appeal, practice and fees, is a county court, and in like manner is a court of record (*p*). Any powers, rights, or privileges of the judge and the authority of the mayor, aldermen, and common council of the city of London in relation to the court are preserved (*q*). This reservation does not prevent a mandamus issuing against the judge where he refuses to do his duty (*r*), nor does it confer on him any greater rights over costs than that given to judges of county courts (*s*).

SUB-SECT. 3.—*Local Jurisdictions.*

Surrender of local jurisdictions.

879. The lord of any hundred, honor, manor, or liberty having any court in right thereof, in which debts or demands may be recovered, may surrender such court to the Crown, and after its surrender such court is to be discontinued, but such a surrender does not take away any franchise or right, other than that of recovery of debts, incident to such court (*t*).

Exclusion of local jurisdictions.

Local jurisdictions in causes whereof the county court has cognisance may be excluded by petition to the King in Council (*a*).

The establishment of county courts does not affect in any way the rights, privileges, and jurisdiction of the chancellor's court in the Universities of Oxford or Cambridge (*b*) or the court of the vice-warden of the Stannaries (*c*).

SUB-SECT. 4—*Times of Sitting.*

Times of sitting.

880. At each place named in his district the county court judge must attend and hold a court on such day and at such time as he shall appoint and at least once a month, or at such other interval

(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 12.

(*n*) *Ibid.*, s. 13; and see p. 414, *post.*

(*o*) This includes the courts held by virtue of the London (City) Small Debts Extension Act, 1852 (15 & 16 Vict. c. lxxvii.). This Act assimilated the practice and procedure of the old "sheriff's court" to that of the modern county court. The City of London Court was made a county court by ss. 3 and 35 of the County Courts Act, 1867 (30 & 31 Vict. c. 142).

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 185.

(*q*) *Ibid.* The power to remove the registrar of the City of London Court is vested in the common council (*Osgood* v. *Nelson* (1872), 41 L. J. (Q. B.) 329, H. L.).

(*r*) *Blades* v. *Lawrence* (1874), L. R. 9 Q. B. 374. For the issue of a mandamus, see p. 614, *post.*

(*s*) *Howard* v. *Graves* (1885), 52 L. T. 858.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 6. As to the courts mentioned in this sub-section, see title COURTS.

(*a*) *Ibid.*, s. 7.

(*b*) *Ibid.*, s. 176.

(*c*) *Ibid.*, s. 177. As from January 1, 1897, the latter court ceased to exist except for proceedings already pending, and its jurisdiction is vested in the county courts of Cornwall by the Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), s. 1, and by orders of the Lord Chancellor made in pursuance thereof. For the practice under this Act, see p. 686, *post.*

as the Lord Chancellor may order (*d*). Notice of the day and hour on which each court is to be held must, three months before the holding thereof, be affixed in some conspicuous place in the court-house and in the registrar's office (*e*). Whenever any day or hour so appointed is altered notice of the alteration must immediately be affixed in like manner, but any judge may from time to time hold additional and adjourned courts (*f*).

Unavoidable absence of judge.

Where, by reason of death or unavoidable absence, a judge is not present, the registrar (after exercising his powers where the defendant does not appear or admits the debt (*g*)), or in his unavoidable absence, the high bailiff, must adjourn the court to a convenient day and enter in the minute-book the cause of such adjournment (*h*).

Two courts on one day.

881. Two courts must not be held before the same judge on one day, unless with the consent of the Lord Chancellor (*i*).

Vacation.

882. No judge is obliged to hold any courts during the month of September in any year, unless ordered by the Lord Chancellor so to do, but some other period not exceeding four weeks may be substituted for September with the sanction of the Lord Chancellor (*k*). An office must be kept open by the registrar in the place of the court of which he is registrar on every weekday from 10 a.m. to 4 p.m., except upon certain holidays (*l*), and the office may be closed at 1 p.m. on Saturdays, or, if necessary, on a day more convenient, to be fixed by the judge. In cases where the court is held in two places within one district there need not be an office kept open in each place unless the Lord Chancellor orders, nor need the office be kept open during the holding of a court in a place other than where the office is situate (*m*). By order of the Lord Chancellor an office may be kept open by the registrar at a place within the district where no court is held (*n*), and by his special order the offices, or any of them, may from time to time be closed on certain days named in such order (*o*).

Period of opening of registrar's office.

(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 10.

(*e*) *Ibid.*; and County Court Rules, Ord. 1, r. 1. As to the places of sitting, see p. 414, *post*.

(*f*) County Court Rules, Ord. 1, r. 1.

(*g*) See pp. 527, 529, *post*.

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 10.

(*i*) County Court Rules, Ord. 1, r. 2. This does not apply to the holding of an additional or adjourned court or to the City of London Court (*ibid.*).

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 11. This provision does not affect the obligation of keeping open the registrar's offices for the receipt and payment out of money due under any order of the court or for any proceedings before the registrar (*ibid.*).

(*l*) County Court Rules, Ord. 1, r. 3. The holidays are Christmas Day, Good Friday, the Saturday next after Good Friday, Easter Monday and Tuesday, Whit Monday, the first Monday in August, any day appointed by royal proclamation for a public fast, humiliation or thanksgiving, and any day appointed by the Lord Chancellor for closing the office (*ibid.*).

(*m*) *Ibid.* As to the effect of these rules upon time and notices, see p. 620, *post*.

(*n*) County Court Rules, Ord. 1, r. 4.

(*o*) *Ibid.*, r. 5.

SECT. 1. Courts.

SUB-SECT. 5.—*Buildings and Incidental Expenses.*

Buildings and expenses thereof.

883. In every town or place where a court is held the town hall, court-house, or other public building belonging to any county, city, borough, town or place or vested in any public body is to be used for the court, without any charge for rent except reasonable charges for warming, lighting, and cleaning; the court days are to be fixed so as not to interfere with the business usually carried on in such building (*p*). This provision does not apply to places where a court-house has been specially built for the purpose (*q*). In other places the Commissioners of Works are empowered, with the approval of the Treasury, to build, purchase, hire, or otherwise provide courthouses, offices, and buildings necessary for holding county courts (*r*), and all property, real and personal, connected with county courts (other than money and securities for money, books, papers and records) is vested in them (*s*).

General expenses.

884. The expense of supplying the courts and offices with law and office books, stationery, stamps, the expenses of conveying persons committed to prison, and all other expenses arising out of the jurisdiction of county courts, are paid by the Treasury from a parliamentary grant (*a*).

SECTION 2.—*Judges.*

SUB-SECT. 1.—*Appointment and Effect thereof; Removal.*

Appointment of judge.

885. The power of appointing county court judges is in the hands of the Lord Chancellor, except where the whole of the district is within the Duchy of Lancaster, in which case the appointment is made by the Chancellor of the duchy; the number of county court judges must not exceed sixty, and the necessary qualification of a person so appointed is that he shall be a barrister of at least seven years' standing (*b*). A judge is appointed for each district (*c*), but the same person may be the judge of several districts (*d*), and the Lord Chancellor may direct that there shall be two judges of a district or districts (*e*).

Liability of judge.

886. A county court judge, as a judge of a court of record, in accordance with general principles is not civilly liable for judicial

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 179.
(*q*) *Ibid.*
(*r*) County Court (Buildings) Act, 1870 (33 & 34 Vict. c. 15), s. 4. A building leased for this purpose is not rateable for the relief of the poor (*R.* v. *Manchester Overseers* (1854), 18 Jur. 267).
(*s*) *Ibid.*, s. 3.
(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 181.
(*b*) *Ibid.*, s. 8. By Order in Council of August 7, 1884, county court judges have precedence asssigned to them after knights bachelors, and the official designation of "His Honour Judge ——" (*London Gazette*, August 8, 1884, p. 3569).
(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 5.
(*d*) *R.* v. *Parham* (1849), 13 Q. B. 858.
(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 12.

acts done by him within the scope of his jurisdiction (*f*), nor even for slander spoken by him in the course of a judgment (*g*); but he is so liable if he, when not misinformed as to facts, acts without jurisdiction and under a mistaken idea that he possesses jurisdiction (*h*). A criminal information will not be granted against him for anything done by him in his office unless it be shown that he acted from a corrupt motive (*i*), and not even then where the complainant has elected his remedy by previously making a complaint to the Lord Chancellor (*k*).

Judge as justice of the peace.

A judge may be included by the King in any commission of assize, oyer and terminer or gaol delivery (*l*), and may be appointed justice of the peace for any borough, city, county, riding or division of a county in which he holds a court (*m*).

Disabilities of judge.

A judge cannot during his continuance in office be elected or sit as a member of the House of Commons (*n*); nor can he practise as a barrister, special pleader, or equity draftsman; nor can he be directly or indirectly concerned as a conveyancer, notary public, or solicitor; nor can he act as arbitrator or referee for any remuneration to himself (*o*). Where he proposes to sue any person dwelling or carrying on business in any district of which he is a judge he may bring his action in the court of any adjoining district of which he is not the judge; and any person proposing to sue a judge may bring his action in any court of a district adjoining the district of which the defendant is judge (*p*).

Removal of judge.

887. The Lord Chancellor or the Chancellor of the Duchy of Lancaster (as the case may be) may remove for inability or misbehaviour any judge already appointed or hereafter to be appointed by them respectively (*q*). The validity of the removal and of the appointment of a successor may be questioned by a writ of *quo warranto* (*r*), but this cannot be done if an inquiry has been held by the Lord Chancellor (*s*), nor after such inquiry is it necessary to serve upon the judge a notice to show cause why he should not be removed (*t*).

(*f*) *Kemp* v. *Neville* (1861), 10 C. B. (N. S.) 523; *Dawkins* v. *Paulet* (*Lord*) (1869), L. R. 5 Q. B. 94; *Fray* v. *Blackburn* (1863), 3 B. & S. 576; *Anderson* v. *Gorrie*, [1895] 1 Q. B. 668, C. A.; see further, title COURTS.

(*g*) *Scott* v. *Stansfeld* (1868), L. R. 3 Exch. 221.

(*h*) *Houlden* v. *Smith* (1850), 14 Q. B. 841.

(*i*) *Re* —— (1852), 16 Jur. 995.

(*k*) *R.* v. *Marshall* (1855), 4 E. & B. 475; *Ex parte Ramshay* (1852), 18 Q. B. 173.

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 16.

(*m*) *Ibid.*, s. 17, as amended by Justices of the Peace Act, 1906 (6 Edw. 7, c. 16); see schedule thereof).

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 8.

(*o*) *Ibid.*, s. 14.

(*p*) *Ibid.*, s. 22. This provision applies although the adjoining district selected be in another county (*Partridge* v. *Elkington* (1870), L. R. 6 Q. B. 82), and applies to equitable proceedings (*Linford* v. *Gudgeon* (1871), 6 Ch. App. 359).

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 15.

(*r*) *R.* v. *Owen* (1850), 15 Q. B. 476. This was the case of a county court clerk, but it is submitted that the same principle applies to judges; see the cases cited in the next note. As to *quo warranto*, see title CROWN PRACTICE.

(*s*) *Ex parte Ramshay* (1852), 18 Q. B. 173; *R.* v. *Marshall* (1855), 4 E. & B. 475.

(*t*) *Ex parte Ramshay*, *supra*.

Judges.

Judge acting for another judge.

888. Any judge can act for any other judge within or without the districts presided over by such other judge (*a*). Where he so acts a memorandum to that effect must be added to any document signed by him (*b*).

Appointment and powers of deputy.

889. In the case of the illness or unavoidable absence of any judge, he may appoint a barrister-at-law of at least seven years' standing to act as his deputy during such illness or unavoidable absence (*c*). He must forthwith communicate to the Lord Chancellor the fact of the appointment and the name of the deputy, who cannot, when so appointed, act for more than fourteen days at any time unless with the approval of the Lord Chancellor. Where the judge cannot make the appointment, the Lord Chancellor or the Chancellor of the Duchy (as the case may be) may do so (*d*). A deputy of the same qualification may be appointed by a judge, with the approval of the Lord Chancellor or the Chancellor of the Duchy (as the case may be), for any time or times not exceeding in the whole two months in any consecutive period of twelve months. During the continuance of his appointment the deputy has all the powers and privileges, and must perform all the duties of the judge for whom he has been appointed (*e*). He may not, however, except when appointed to the Westminster County Court of Middlesex, practise as a barrister in any court within the district for which he acts during his continuance of office as deputy (*f*). A judge may appoint a deputy for one or more of the district courts of which he is a judge, and not necessarily for the whole district (*g*). A deputy judge has power to reserve judgment, but if his deputyship expires before he delivers his judgment, it should be delivered by the judge, and thereupon becomes a judgment of the court (*h*). Where a deputy is incapable of performing his duties by reason of illness or otherwise, the Lord Chancellor may appoint a person duly qualified to act for him (*i*).

Effect of death or resignation of judge.

890. The appointment of a deputy is not vacated by the death or resignation of the judge, but his powers continue in all the courts to which he was appointed during the vacancy in the office of judge. Where the judge has made no appointment, the Lord Chancellor may, in the event of his death or resignation, appoint a deputy for any period not exceeding three months if the office shall so long remain vacant. In either case the deputy is to receive as

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 19.
(*b*) County Court Rules, Ord. 2, r. 15, and County Court Rules, Appendix, Form No. 4.
(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 18.
(*d*) *Ibid.*
(*e*) *Ibid.*
(*f*) *Ibid.*, s. 20.
(*g*) *R.* v. *Lloyd*, [1906] 1 K. B. 552, C. A., where a judge appointed two deputies who happened to sit in two courts within his district upon the same day, and objection was unsuccessfully taken on prohibition that the appointment of one of the deputies was invalid.
(*h*) *Rathbone* v. *Munn* (1868), 9 B. & S. 708.
(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 19.

remuneration a rateable proportion of the salary and travelling allowance attached to the office so vacant during any vacancy (*k*).

SUB-SECT. 3.—*Salaries and Pensions.*

Salary of judge.

891. The yearly salary of a judge is £1,500, and a reasonable sum is paid him for travelling expenses, having regard to the size and circumstances of his district. The salaries are paid out of the Consolidated Fund and the travelling allowances out of a parliamentary grant (*l*).

Pension of judge.

The Lord Chancellor may, on petition to him, recommend the Treasury to pay to a judge who is afflicted with permanent infirmity disabling him from the due execution of his office, and who desires to resign the same, an annuity or yearly sum for the term of his life, not exceeding two-thirds of the yearly salary to which he was entitled when he presented his petition (*m*). A judge's pension so granted is liable to sequestration for a judgment debt (*n*).

SECT. 3.—*Registrars.*

SUB-SECT. 1.—*Appointment and Effect thereof; Removal.*

Registrar's appointment, qualifications and liabilities.

892. A registrar is appointed for every court, and must be a solicitor of the Supreme Court of at least five years' standing; the appointment lies with the judge of the district, subject to the approval of the Lord Chancellor. No person may be appointed registrar of more than one court, and the registrar must reside within the district of his court. In the case of any court where the number of plaints for the preceding year has exceeded eight thousand, the Lord Chancellor may in the case of any future appointment make it a condition of the appointment that the registrar shall not practise as a solicitor or notary, but none of these provisions are to disqualify a registrar from holding any other public appointment (*o*). The registrar is, like other county court officers, disqualified from practising in his own court, subject to a penalty of £50, which can be recovered by action at the suit of any person (*p*), and may be disqualified from general practice by special order (*q*). A registrar appointed after the 23rd April, 1866, must, and if previously appointed may, take over the office of high bailiff unless the Lord Chancellor determine otherwise (*r*).

Removal of registrar.

893. The Lord Chancellor or the Chancellor of the Duchy of Lancaster (as the case may be), when either of them in his discretion thinks fit, may remove the registrar of any court from his office

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 19, 21.
(*l*) *Ibid.*, s. 23.
(*m*) *Ibid.*, s. 24.
(*n*) *Willcock* v. *Terrell* (1878), 3 Ex. D. 323, C. A.
(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 25. As to joint registrars, see p. 419, *post.*
(*p*) *Ibid.*, s. 41. As to actions by and against a registrar, see p. 423, *post.*
(*q*) *Ibid.*, s. 45. Where he becomes an officer of the Supreme Court by reason of the amount of business in his court and for other reasons, see p. 420, *post.*
(*r*) *Ibid.*, s. 37; and see p. 421, *post.*

SECT. 3. Registrars.

and from time to time may make orders as to the attendance of any registrar during the sitting of the court or otherwise (*s*).

SUB-SECT. 2.—*Duties and Powers.*

General duties of registrar.

894. The registrar, with such clerks as may be required, issues all summonses, warrants, precepts and orders of execution, registers all orders and judgments of the court, keeps an account of all proceedings of the court and an account of all court fees and fines payable or paid into court and of all moneys paid into and out of court, and keeps a book in which all such fees, fines, and money are accounted for, the accounts being liable to audit by the treasurer (*t*). He has to account to the treasurer for any penalties, fines, or fees paid to him (*a*) and to submit once every year a general account, vouched by receipts, of all sums paid by him to the treasurer to the Auditor-General (*b*).

Entry of plaints and other proceedings.

895. He must enter plaints (*c*) and cause to be entered a note of all plaints, summonses, orders, judgments and executions and returns thereto, fines, and all other proceedings of the court in a book belonging to the court, which must be kept at the office. Such entries, or a copy thereof, bearing the seal of the court and purporting to be signed and certified as a true copy by the registrar are generally admissible in evidence without further proof (*d*). Where an order is actually drawn up, the entry is evidence thereof, which cannot be contradicted by a memorandum of the judge as to what was his intention (*e*), but where an order is subsequently to be drawn up in the minute book an entry is only a step towards such formal order (*f*). Office copies of all proceedings and documents are prepared by the registrar for any party entitled to the same upon prepayment of the costs thereof (*g*). He must keep the books of the court, including the banker's book and cash book, open for

(*s*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 27.

(*t*) *Ibid.*, ss. 26, 171; County Court Rules, Ord. 2, r. 4. The various books are enumerated in Ord. 2, r. 2, and the forms of the same will be found in Appendix, Part II., of the County Court Rules. As to inspection of the books by the treasurer, see p. 419, *post*. It was held under a repealed statute that the registrar was not liable for non-compliance by him with the rules of practice unless an obligation can be specifically proved to arise under the words of the particular statutes and rules laying down such rules of practice (*Robinson* v. *Gell* (1852), 12 C. B. 191).

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 168, 169.

(*b*) *Ibid.*, s. 170.

(*c*) *Ibid.*, s. 73.

(*d*) *Ibid.*, s. 28.

(*e*) *Dews* v. *Riley* (1851), 11 C. B. 434.

(*f*) *Harris* v. *Slater* (1888), 21 Q. B. D. 359; *Saunders* v. *Swansea Finance Co., Ltd. and Home* (1905), 21 T. L. R. 317, C. A., distinguishing *Dews* v. *Riley*, *supra*. A certified copy of minutes, expressed to be those of proceedings before a deputy judge, is sufficient evidence of his appointment in an indictment for perjury (*R.* v. *Roberts* (1878), 38 L. T. 690), and a defendant on a counterclaim is estopped by a record adverse to him, even though the county court had no jurisdiction to enforce the same (*Webster* v. *Armstrong* (1885), 54 L. J. (Q. B.) 236).

(*g*) County Court Rules, Ord. 2, r. 7.

inspection by the treasurer at any time (*h*). He has the custody of securities deposited with him and of money paid into court, and must comply with regulations of the Treasury in respect of the same (*i*).

Jurisdiction of registrar generally.

896. In actions of contract where the defendant does not appear, the registrar has jurisdiction, by leave of the judge, or in case of the judge's death or unavoidable absence, upon proof of service and of the debt, to enter up judgment for the plaintiff, or order payment by instalments, or order a nonsuit or strike out or adjourn an action (*k*). He has a similar jurisdiction where the defendant appears and admits the claim, and also, by leave of the judge, jurisdiction to try disputed claims where the amount involved does not exceed £2, and to try matters of account referred to him by the judge (*l*). He has other duties involved in the county court jurisdiction under various special statutes, which will be dealt with hereafter (*m*).

SUB-SECT. 3.—*Joint Registrars and Deputies.*

Joint registrars.

897. The Lord Chancellor may, in populous districts where it appears to him expedient, appoint two persons of the necessary qualification (*n*) as joint registrars under regulations as to division of duties and emoluments (*o*). On the death, resignation, or removal of a joint registrar, the survivor is to be sole registrar unless the Lord Chancellor otherwise orders (*p*), and the death of one such registrar does not render the office of the other vacant (*q*).

Deputy registrar.

898. The registrar with the approval of the judge, or in case of the registrar's inability the judge, may appoint a duly qualified person to act for him at any time when he is prevented by illness or unavoidable absence from acting, and may remove such deputy at his pleasure. The deputy occupies the same position as the registrar as regards jurisdiction, duties, and penalties. The appointment is not vacated by the death or removal of the registrar, and his acts done after the registrar's death or removal remain valid and he continues to act until the appointment of a successor. Notice of any vacancy in the office of registrar must be given forthwith to the judge, who cannot fill the vacancy within one month after the date of notice without the assent of the Lord Chancellor (*r*). The deputy seems to be entitled to be paid by the

(*h*) County Court Rules, Ord. 2, r. 12. In *Burridge* v. *Nicholetts* (1861), 6 H. & N. 383, a treasurer who had given notice of intention to audit the accounts was held justified in breaking open the registrar's office in order to get at the books, notwithstanding that the office had been closed at the proper time by the registrar.

(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 70, 71; County Court Rules, Ord. 2, r. 16.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 90; and see p. 527, *post*.

(*l*) *Ibid.*, s. 92; and see p. 529, *post*.

(*m*) See pp. 622 *et seq.*, *post*.

(*n*) See p. 417, *ante*.

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 29.

(*p*) *Ibid.*, s. 30.

(*q*) *R.* v. *Wake* (1857), 8 E. & B. 384.

(*r*) *Ibid.*, s. 31. It appears that in practice the appointment may be general, and not specifically made for each occasion upon which the deputy acts.

SECT. 3. Registrars.

registrar for his services (*s*), and after the death or removal of the registrar is entitled to a rateable proportion of the salary attaching to the office (*t*).

Deputy registrar provisionally appointed.

899. Whenever the registrar or his lawful deputy is absent from the sitting of a court, the judge appoints a deputy to act on his behalf, and an entry of such appointment and the cause of absence (when ascertained) must be made on the minutes of the court (*a*). On the death or removal of a registrar who has not appointed a deputy the judge may provisionally appoint, for a period not exceeding three months, a duly qualified person to act as registrar. Such a person acts and has all the rights and liabilities of a registrar until a permanent successor is appointed, and receives as remuneration a rateable proportion of the salary attaching to the office (*b*).

SUB-SECT. 4.—*Salaries*

Computation of salary.

900. The registrar is paid by salary regulated by the number of plaints entered at his court during the year. Where the plaints so entered exceed six thousand, the salary must be fixed, exclusive of clerks' salaries and office expenses, at not more than £700 a year. In the case of a court where the amount of business and the fact of the registrar being district registrar of the High Court or district probate registrar or holding other public office render it desirable that his whole time should be given to the public service, the Lord Chancellor may, by order laid before Parliament, direct that he shall not practise as a solicitor (*c*). He then becomes an officer of the Supreme Court (*d*), and is paid by the Treasury in respect of his public offices a salary in no case exceeding £1,400 a year. No order of this nature can be made with respect to a registrar appointed before the County Courts Act, 1888, without his consent (*e*). Where a registrar becomes an officer of the Supreme Court under these provisions he must account for and pay over to the Exchequer all fees whatsoever received by him after such appointment in accordance with directions of the Lord Chancellor and Treasury (*f*). In the case of consolidated districts the Lord Chancellor may make special provisions for the duties of registrars (*g*).

Where registrar is high bailiff.

901. Where the registrar performs the duties of high bailiff he receives in addition to his salary a sum equal to one fifth part of such salary and allowances for service and execution of process

(*s*) See *Wetherfield* v. *Nelson* (1869), L. R. 4 C. P. 571.
(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 31.
(*a*) County Court Rules, Ord. 2, r. 1.
(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 32.
(*c*) *Ibid.*, s. 45. Where the plaints number 200 or less in the year the salary is fixed at £100, and is increased by the addition of £4 for every additional 25 plaints above 200 up to 6,000 inclusive (*ibid.*).
(*d*) Within the meaning of the Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78).
(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 45.
(*f*) County Courts Act, 1903 (3 Edw. 7, c. 42), s. 6 (2).
(*g*) *Ibid.*, s. 6 (1).

determined by the Treasury (*h*). He is entitled to certain fees in proceedings under special statutes conferring jurisdiction on the county court, and to remuneration paid out of fees for certain duties under the County Courts Act, 1888, and other Acts where no remuneration is specially provided (*i*).

Payment of salary.

902. The salaries are paid out of fees; any deficiency is made up from a parliamentary grant and any surplus paid over to the credit of the Consolidation Fund (*k*).

SECT. 4.—*Bailiffs.*

SUB-SECT. 1.—*Appointment of High Bailiff and Bailiffs.*

Appointment of bailiffs.

903. On the vacancy in the office of high bailiff a registrar appointed after the 23rd of April 1866 must, and if previously appointed may, take over the office of high bailiff, unless a successor is specially appointed with the approval of the Lord Chancellor (*l*). Subject to this provision each court must have at least one high bailiff, who is appointed by the judge and cannot be appointed for more than one court. The high bailiff need have no special qualification, and is subject to removal at the discretion of the Lord Chancellor or the Chancellor of the Duchy of Lancaster (as the case may be). He or any person discharging his duties may, by writing, appoint a sufficient number of persons, not exceeding the number allowed by the judge, to be bailiffs to assist him. These are subject to dismissal by the high bailiff and to suspension or dismissal by the judge, and may serve or execute any process which may be served or executed by the high bailiff, unless otherwise specially provided against (*m*).

Bailiffs during vacancy of high bailiff.

904. On the death or removal of the high bailiff the bailiffs continue to act until dismissed by his successor or the judge (*n*), and in the same event the judge may provisionally appoint a deputy high bailiff for a period not exceeding three months, who has for the time all the rights and liabilities of the high bailiff (*o*).

Special bailiff.

905. A special bailiff may be appointed by the court to levy execution in a case where the high bailiff is himself the defendant (*p*).

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 37.

(*i*) *Ibid.*, s. 47. For these statutes see pp. 622 *et seq.*, *post*. For a list of these fees see Sched. B of the Treasury Order regulating County Court Fees, dated December 30, 1903.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 44.

(*l*) *Ibid.*, s. 37.

(*m*) *Ibid.*, s. 33. The under-bailiffs must be appointed in strict pursuance of this section, and service of process by a person not so appointed is irregular (*The Palomares* (1885), 10 P. D. 36). An under-bailiff is not a person "employed in the public service of Her Majesty" under s. 70 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), nor is he the servant of the bailiff (*R.* v. *Glover* (1864), 9 Cox, C. C. 500). An under-bailff may, if authorised by the judge, act as a broker or appraiser (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 159).

(*n*) *Ibid.*, s. 34.

(*o*) *Ibid.*, s. 36.

(*p*) *Bellamy* v. *Hoyle* (1875), L. R. 10 Exch. 220.

SECT. 4. Bailiffs.

SUB-SECT. 2.—*Duties.*

Duties of high bailiff and bailiffs generally.

906. The high bailiff must attend every sitting of the court for such time as the judge requires him, unless his absence for reasonable cause is allowed by the judge (*q*), and whenever he is absent he must send to the registrar a statement in writing as to the cause of his absence, which is entered on the minutes of the court (*r*). He must by himself or by the bailiffs appointed to assist him serve all summonses and orders and execute all the warrants, precepts, and writs issued out of the court, except in cases specially provided for; he and his bailiffs must conform to all general rules of practice, and subject thereto to the order and direction of the judge (*s*). He must keep books and make returns according to certain forms (*t*). He or a bailiff must attend at least once every day at the office of the registrar to receive processes and compare and examine the same to prove the correctness thereof (*a*). In courts where the plaints entered in a year exceed six thousand he must keep open an office in connection with his duties during the same hours as the registrar's office is open (*b*).

Entry of judgments.

He must enter in an order book all judgments or orders for the payment of money or costs or other orders, and the date on which he has posted or otherwise sent the same (*c*).

Service.

He must serve summonses and processes sent to him from another court to be served out of the district of such court (*d*).

He also has various duties connected with special Acts conferring jurisdiction on the county courts (*e*).

SUB-SECT. 3.—*Salary.*

Salary of high bailiff.

907. The high bailiffs are paid by salary fixed by the Treasury with the concurrence of the Lord Chancellor, or partly by salary and partly by allowances for execution of warrant and for mileages on the service or execution of any process fixed in like manner, the salary to include all payments made to their under-bailiffs. They are entitled to receive for their own use the fees appointed for keeping possession of goods under executions (*f*). They are also entitled to the remuneration allowed by the Treasury, with the consent of the Lord Chancellor, for certain duties under the County Courts Act, 1888 (*g*), or other Acts where no remuneration is specially provided and this is paid out of fees (*h*).

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 35.
(*r*) County Court Rules, Ord. 2, r. 17.
(*s*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 35. As to service, see p. 468, *post*; as to execution of warrants, see p. 558, *post*. As to the liability of bailiffs generally, see p. 425, *post*.
(*t*) County Court Rules, Ord. 2, r. 18.
(*a*) *Ibid.*, r. 19.
(*b*) *Ibid.*, r. 20.
(*c*) *Ibid.*, r. 32.
(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 76.
(*e*) See pp. 622 *et seq.*, *post*.
(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 46.
(*g*) *Ibid.*
(*h*) *Ibid.*, s. 47. For a list of such fees and sureties see Sched. B of the Treasury Order regulating County Court Fees, dated December 30, 1903.

SECT. 5.—*Treasurers.*

Office and duties of treasurer.

908. The treasurer was appointed by the Commissioners of the Treasury, and was removable at their instance (*i*). On the vacancy in the office of treasurer from his death, resignation, or removal the same is not to be filled up, and the accounts outstanding in such a case must be examined by a Treasury official (*k*). For purposes of economy the Treasury may permit a treasurer to retire upon a superannuation allowance (*l*).

The duties of a treasurer, where there is one, consist in settling and auditing the accounts of the officers of the court, in receiving balances paid over to him and in accounting for such balances and other sums coming into his hands (*m*). If the clerk to a treasurer is employed by the Treasury to examine accounts under their supervision he is, after one year of such service, deemed to be a civil servant and entitled to superannuation (*n*).

SECT. 6.—*Liabilities and Protection of Officers.*

SUB-SECT. 1.—*Liabilities of Officers generally.*

Security to be given by officers.

909. The treasurer, registrar, and high bailiff of every court who may receive any moneys in the execution of his duty must give security for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under the County Courts Act, or which they may become liable to pay for any misbehaviour in their office (*o*).

Officers not to act as solicitors.

910. No registrar, treasurer, high bailiff, or other officer of any court may, either by himself or his partner, be directly engaged as solicitor or agent for any party in any proceeding in a county court, subject to a penalty of £50 for each offence, which may be recovered by any person by action of debt (*p*). No officer of the court, and no partner or clerk of any officer, may, on account of suitors, sign the ledger or any other book, or receive money or otherwise act as agent for that purpose (*q*), and no officer of the court may become surety in any case where, by the practice of the court, security is required (*r*).

Actions by officers.

911. Where an action is brought by an officer in the court of which he is an officer, except as official receiver, the judge must, at

(*i*) County Courts Act, 1846 (9 & 10 Vict. c. 95), s. 23.
(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 38.
(*l*) *Ibid.*, s. 39.
(*m*) *Ibid.*, ss. 170, 171, 172. These duties are now performed by clerks under the supervision of the superintendent of the county court department of the Treasury.
(*n*) *Ibid.*, s. 178.
(*o*) *Ibid.*, s. 40. The form and manner of the security is settled by the Treasury (*ibid.*). Security for balances etc. is also required (*ibid.*, s 172). Any material change in the duties of the officer in respect of which it is given vacates the bond (*Pybus* v. *Gibb* (1856), 6 E. & B. 902).
(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 41. An assistant registrar is an officer of the court within this provision (*Ackroyd* v. *Gill* (1856), 5 E. & B. 808).
(*q*) County Court Rules, Ord. 2, r. 13.
(*r*) County Court Rules, Ord. 29, r. 6.

SECT. 6. Liabilities and Protection of Officers.

the request of the defendant, order the venue to be changed and send the action for trial to the court of some convenient district of which he is not the judge. In the event of such an order a certified copy of the plaint, a duplicate copy of the summons and particulars, and a certified copy of the order must be sent to the registrar of the latter court, and the judge of that court appoints a day for trial, notice of which must be sent by post to the registrar of the original court and to both parties (*s*).

Where officer may be sued.

Where an action is brought against an officer of the court, the summons may issue in the district of which he is an officer, or in any adjoining district the judge of which is not the judge of the former district (*t*). Where any of the parties to an action are officers of the court, the judge has a general discretion to change the venue to some adjoining court of which he is not the judge (*a*).

Remedies against officers for misconduct.

912. Any registrar, bailiff, or officer of any court who, acting under colour or pretence of the process of the said court, is charged with extortion or misconduct (*b*), or with not duly paying or accounting for any money levied by him under the authority of the County Courts Act, is liable to an inquiry before the judge in a summary manner; the judge can enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and in his discretion may order the repayment of any money so extorted or levied, or the payment of damages and costs, or may impose a fine not exceeding £10 for each offence. In default of payment under his order payment may be enforced in the same manner as under a judgment of the court (*c*).

Penalties for taking fees not allowable.

In addition to being liable for damages, any of the officers of the court is liable to permanent disability from holding any office of profit or emolument under the County Courts Act, and is also liable to damages if he shall be duly proved before the judge wilfully and corruptly to have exacted, taken, or accepted any fee or reward whatsoever, whether relative to executing the County Courts Act or not, excepting the fees properly allowable under that Act (*d*).

Procedure where officer charged with misconduct.

Where an officer is charged with an offence as above stated, the summons must be served on him personally ten clear days before the return day (*e*). The costs awarded on the order are in the judge's discretion, and in default of his order they must be taxed

(*s*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 42. As to actions by and against the judge, see p. 414, *ante*. For form of order changing venue, see County Court Rules, Appendix, Form 120.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 43; and compare p. 415, *ante*.

(*a*) County Court Rules, Ord. 22, r. 23.

(*b*) There must be an intentional abuse of power to constitute misconduct within this provision (*Moore* v. *Brompton County Court High Bailiff* (1893), 62 L. J. (Q. B.) 498.

(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 50, County Court Rules, Ord. 52, r. 5. As to the manner of enforcing payment under a judgment of the court, see pp. 550 *et seq.*, *post*.

(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 51. In the case of a treasurer, registrar, or high bailiff the judge's finding must be approved by the Lord Chancellor (*ibid.*).

(*e*) County Court Rules, Ord. 52, r. 4. For form of summons see County Court Rules Appendix, Form 363.

on the scale applicable to the amount ordered to be paid, or in the case of a successful defendant on the scale applicable to the amount claimed (*f*).

SUB-SECT. 2.—*Liabilities of High Bailiff.*

General liability of high bailiff.

913. The high bailiff is responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers (*g*). He is also liable to the same extent for the wrongful acts of a person employed by one of his under-bailiffs to whom a warrant has been delivered for execution (*h*). He is responsible if process is served or executed upon the wrong person, provided such person did not contribute to the mistake (*i*); but if a person sued in a wrong name omits to take objection when served with any process he is presumed to acquiesce (*k*).

Liability for escapes and neglect to levy execution.

914. Where any bailiff of any court, employed to levy an execution against goods and chattels, loses, by neglect or connivance or omission, the opportunity of levying any such execution, the judge, upon due proof of the fact, may order him to pay damages sustained by the plaintiff, in any case not exceeding the sum recoverable on the execution, and, after demand and refusal, payment of the sum may be enforced as in the case of a judgment of the court (*l*). This provision does not enable the judge of one court to order the bailiff of a different district to pay compensation after neglect to levy execution in pursuance of a warrant of the first court (*m*). The provision does not exempt a high bailiff, where he neglects to levy execution, from liability to an action for damages in the same manner as a sheriff is liable (*n*). A summons against a bailiff under this provision must be personally served on him ten clear days before the return day (*o*), and the same rules as to costs apply as in the case of an order against an officer for misconduct (*p*).

(*f*) County Court Rules, Ord. 52, r. 5. For form of order see County Court Rules, Appendix, Form 364; as to scales, see p. 580, *post*.

(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 35; *Smith* v. *Pritchard* (1849), 8 C. B. 565. As to claims against the high bailiff in respect of the sale of goods under an execution, see title SHERIFFS AND BAILIFFS.

(*h*) *Burton* v. *Le Gros* (1864), 34 L. J. (Q. B.) 91.

(*i*) *Walley* v. *M'Connell* (1849), 13 Q. B. 911; *Dunstan* v. *Paterson* (1858), 2 C. B. (N. S.) 495.

(*k*) *Fisher* v. *Magnay* (1843), 5 Man. & G. 778. Where a judgment debt was paid to the plaintiff and not into court, the officers were held not responsible for executing a warrant in ignorance of this fact (*Davies* v. *Fletcher* (1853), 2 E. & B. 271).

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 49; County Court Rules, Ord. 52, r. 5. For form of order see County Court Rules, Appendix, Form 362. As to the mode of enforcing a judgment of the court, see pp. 550 *et seq.*, *post*.

(*m*) *R.* v. *Shropshire County Court Judge* (1887), 20 Q. B. D. 242, also reported *sub nom. R.* v. *Rogers* (1887), 57 L. J. (Q. B.) 143.

(*n*) *Watson* v. *White*, [1896] 2 Q. B. 9.

(*o*) County Court Rules, Ord. 52, r. 4. For form of summons see County Court Rules, Appendix, Form 361.

(*p*) County Court Rules, Ord. 52, r. 5; and see note (*f*), *supra*. For form of order see County Court Rules, Appendix, Form 362.

SECT. 6. Liabilities and Protection of Officers.

A bailiff who wilfully and corruptly indorses any false statement on the copy of a summons or other process is guilty of a misdemeanour, and is liable on conviction to removal from office and punishment as for wilful and corrupt perjury (*q*).

SUB-SECT. 3.—*Protection of Officers.*

No officer deemed trespasser for irregularity.

915. No officer of any county court in executing a warrant of the court, and no person at whose instance any such warrant is to be executed, is deemed to be a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it (*r*). The party aggrieved may bring an action for any special damage, which he may have sustained by reason of such irregularity or informality, against the party guilty thereof, but, unless the damage awarded exceeds 40*s*., can recover no costs (*s*).

Protection of officers generally.

All county court officers are entitled to the protection of the Public Authorities Protection Act, 1893 (*t*). In any action commenced against any person for anything done in pursuance of the County Courts Act, the production of the warrant under the seal of the court is sufficient proof of the authority of the court previous to the issuing of the warrant; and in case the plaintiff has judgment given against him, is non-suited, or discontinues, the defendant is entitled to costs as between solicitor and client (*a*).

Where a warrant is issued for the possession of premises, no action lies against the judge or any of the officers of the court on account of proceedings taken by them on such warrant by reason that the person by whom such proceedings have been sued out had not the lawful right to the possession of the premises (*b*).

Procedure in actions against officers acting under order of court.

916. No action (*c*) may be commenced against a bailiff or registrar (*d*), or against any person acting under him, for anything done in obedience to any warrant under the hand of the registrar and the seal of the court, until demand in writing for the perusal and a copy of the warrant has been made or left at the office of the bailiff by the proposed plaintiff or by his solicitor or agent and the demand has been refused or neglected for six days. Where the demand has been made and complied with, the registrar must be joined as a defendant; otherwise, notwithstanding any defect of jurisdiction or other irregularity in the warrant, a verdict must be

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 78.

(*r*) *Ibid.*, s. 52.

(*s*) *Ibid.* As to the general law of trespass applying to bailiffs, see title SHERIFFS AND BAILIFFS.

(*t*) 56 & 57 Vict. c. 61; *Turley* v. *Daw* (1906), 22 T. L. R. 231, where a claim was made against a high bailiff for neglecting to serve a judgment summons, and the Act was held to apply; *White* v. *Morris* (1852), 11 C. B. 1015. See also *Read* v. *Coker* (1853), 13 C. B. 850; and title PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 55; *Aspey* v. *Jones* (1884), 54 L. J. (Q. B.) 98, C. A.

(*b*) *Ibid.*, s. 144.

(*c*) A motion by a trustee in bankruptcy against a high bailiff for an order on him to deliver up property is not an "action" to which this provision applies (*Re Lock, Ex parte Poppleton* (1890), 39 W. R. 15).

(*d*) *Dews* v. *Ryley* (1851), 20 L. J. (C. P.) 264.

given for the defendant. Where the registrar is so joined the bailiff, on proof of the warrant, is entitled to a verdict, notwithstanding any defect or irregularity as aforesaid, and if the verdict is given against the registrar the plaintiff is entitled to costs against him, to be taxed in such a way as to include the bailiff's costs (*e*).

Penalty for assaulting bailiffs and rescue of goods.

917. Any person assaulting any officer or bailiff of any court while in the execution of his duty, or rescuing or attempting to rescue any goods levied under process of the court, is liable to a fine not exceeding £5, which may be recovered by order of the judge or on summary conviction under the Summary Jurisdiction Acts. In such a case the bailiff of the court may, with or without warrant, take the offender into custody and bring him before the judge (*f*). The power of the bailiff to arrest the offender is given to him as an individual officer, and a wrongful exercise of it does not render the high bailiff liable (*g*). There is no right of appeal against an order made under this provision (*h*). Proceedings taken under this provision do not prevent a civil action being brought (*i*), or an indictment, in view of these proceedings, being preferred against the defendant (*k*).

Procedure in such cases.

The summons must be personally served on the offending defendant two clear days before the return day (*l*), and on the hearing thereof witnesses may be summoned and costs may be awarded as in an action (*m*). The order imposing the fine may be enforced as a debt (*n*) or by distress and sale of the defendant's goods, or in default or in lieu thereof by imprisonment for a term not exceeding the term allowed under the Summary Jurisdiction Acts on a summary conviction in default of distress (*o*).

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 54. For an analogous case of protection of constables acting under a magistrate's warrant, see *Atkins* v. *Kilby* (1840), 11 Ad. & El. 777. The defence afforded by the section is a special defence, of which notice must be given under County Court Rules, Ord. 10, r. 18 (*Denny* v. *Bennett* (1896), 44 W. R. 333); see p. 485, *post*.

(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 48. As to the general power of the court to commit for contempt, see pp. 433, 577, *post*. An under-bailiff in possession of goods under a warrant who leaves temporarily to obtain refreshment and is assaulted on his return is "in the execution of his duty" within the section (*Coffin* v. *Dyke* (1884), 48 J. P. 757).

(*g*) *Smith* v. *Pritchard* (1849), 8 C. B. 565; see also *R.* v. *Briggs* (1883), 47 J. P. 615.

(*h*) *R.* v. *Owen* (1893), 42 W. R. 254.

(*i*) *Re Box* v. *Green* (1854), 9 Exch. 503.

(*k*) *R.* v. *Davies* (1861), 8 Cox, C. C. 486.

(*l*) County Court Rules, Ord. 52, r. 1. For form of summons, see County Court Rules, Appendix, Form 355.

(*m*) County Court Rules, Ord. 52, r. 2.

(*n*) Under County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 167.

(*o*) County Court Rules, Ord. 52, r. 3. For forms of order, see County Court Rules, Appendix, Forms 357—360. See, further, title MAGISTRATES.

Part II.—Jurisdiction and Law.

SECT. 1.—*Ordinary Jurisdiction of County Court.*

SUB-SECT. 1.—*In General.*

Ordinary jurisdiction of the court.

918. The county court has, with certain exceptions, jurisdiction to entertain all personal actions, whether arising out of contract or tort, where the debt, demand, or damage claimed is not more than £100, whether on balance of account or otherwise (*p*). The phrase "personal actions" includes a great variety of actions and claims, and, subject to the limit of amount and certain exceptions hereafter stated (*q*), includes any claim which may form the subject of an action in the King's Bench Division (*r*). Claims under a remedy provided by a special statute are included (*s*), unless the statute contains a special provision excluding the jurisdiction of the county court (*t*). If a case falls within the county court jurisdiction it is not taken out of that jurisdiction by the fact that it also falls within the special jurisdiction of another court conferred by statute (*a*). An action for malicious prosecution and false imprisonment is within the jurisdiction of the county court, subject to the above-stated limit of the amount claimed (*b*).

Jurisdiction in detinue.

An action of detinue is an action founded on tort (*c*), and, where the value of the goods detained does not exceed £100, is a personal action within the jurisdiction of the county court (*d*). In such an

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3.

(*q*) See p. 430, *post*.

(*r*) *Re Stuart* v. *Jones* (1852), 1 E. & B. 22. It includes, *inter alia*, an action against an executor, even when involving a charge of *devastavit* (*Winch* v. *Winch* (1853), 13 C. B. 178); on judgments other than those of the High Court (*Winsor* v. *Dunford* (1848), 12 Q. B. 603); for penalties (*Re Apothecaries Co.* v. *Burt* (1850), 5 Exch. 363). As to cases where the jurisdiction has been challenged by prohibition, see pp. 611 *et seq.*, *post*.

(*s*) *Re Stuart* v. *Jones*, *supra*; *Ames* v. *Higdon* (1893), 69 L. T. 292 (damages under s. 21 (2) of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41)); *Crystal Palace Gas Co.* v. *Idris & Co.* (1900), 82 L. T. 200 (penalty recoverable before two justices).

(*t*) *Crystal Palace Gas Co.* v. *Idris & Co.*, *supra*; *Re Denton* v. *Marshall* (1863), 1 H. & C. 654; *Great Western Rail. Co.* v. *Phillips & Co., Ltd.*, [1908] A. C. 101.

(*a*) *R.* v. *Southend County Court Judge* (1884), 13 Q. B. D. 142 (action falling within admiralty jurisdiction of another county court); *R.* v. *Philbrick*, [1905] 2 K. B. 108 (action for unreasonable charges made by a bailiff in distraining for poor rate which might have been made before two justices under Distress (Costs) Act, 1817 (57 Geo. 3, c. 93), s. 2).

(*b*) This was excluded by a proviso to s. 58 of the County Courts Act, 1846 (9 & 10 Vict. c. 95), but the proviso was not re-enacted in the present County Courts Act.

(*c*) *Bryant* v. *Herbert* (1878), 3 C. P. D. 389, C. A.

(*d*) *Taylor* v. *Addyman* (1853), 13 C. B. 309; *Leader* v. *Rhys* (1861), 10 C. B. (N. S.) 369. Where such an action is brought for the detention of a not-negotiable note, the "value" is the costs and trouble to which the absence of the note would put the plaintiff in proving his title to the money thereby secured (*Clegg* v. *Baretta* (1887), 56 L. T. 775).

action the county court can order specific delivery of a chattel detained, without giving the defendant the option of keeping the chattel, upon paying the assessed value (*e*). The value of the goods, if any, should be ascertained and expressed in the judgment (*f*), although assessment of value is not a condition precedent to the order (*g*).

Claims on balance of account.

919. The jurisdiction of the county court to try claims which are within the pecuniary limit on balance of account (*h*) exists irrespective of the amount of the original claim (*i*). A similar jurisdiction exists where the balance claimed does not exceed £100 after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff (*j*). An admitted set-off means a set-off admitted by the plaintiff before the action (*k*), and not a set-off admitted by both parties (*l*).

Remitted actions.

920. The county court may also entertain certain actions of contract and tort remitted to it from the High Court, obtaining under the order to remit complete derivative jurisdiction over them (*m*).

Replevin.

921. The county court has jurisdiction in all actions of replevin, which may be brought by plaint in the court of the district where the goods were seized (*n*). The registrar of the court of that district may grant replevins, and the replevisor may then commence an action for replevin by plaint in the same court (*o*). If he wishes to commence an action in the High Court he must give security to the approval of the registrar, and in such case the bond is

(*e*) *Winfield* v. *Boothroyd* (1886), 54 L. T. 574.

(*f*) *Chilton* v. *Carrington* (1855), 15 C. B. 730; see further, p. 591, *post*.

(*g*) *Hymas* v. *Ogden*, [1905] 1 K. B. 246, C. A.

(*h*) See note (*p*), p. 428, *ante*. The reduction may arise by payment having been made or an agreed balance having been struck before action (*Woodhams* v. *Newman* (1849), 7 C. B. 654; *Beswick* v. *Capper* (1849), 7 C. B. 669), but not where the plaintiff claims more than £100 and seeks to reduce it by giving the defendant credit for a simple set-off (*Avards* v. *Rhodes* (1853), 8 Exch. 312).

(*i*) *Turner* v. *Berry* (1850), 5 Exch. 858; *Woodhams* v. *Newman*, *supra*; *Hudspeth* v. *Yarnold* (1850), 9 C. B. 625.

(*j*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 57; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3.

(*k*) *Lovejoy* v. *Cole*, [1894] 2 Q. B. 861, where the defendant adopted and acquiesced in the set-off; *Percival* v. *Pedley* (1887), 18 Q. B. D. 635; *Walesby* v. *Goulston* (1866), L. R. 1 C. P. 567.

(*l*) *Lovejoy* v. *Cole*, *supra*, differing on this point from *Hubbard* v. *Goodley* (1890), 25 Q. B. D. 156. It is submitted that the construction put upon the section in *Lovejoy* v. *Cole*, *supra*, is the correct one. The judge may inquire whether the defendant has consented to reduce the claim before action, and proof thereof gives him jurisdiction (*Kimpton* v. *Willey* (1850), 9 C. B. 719).

(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 66. In tort the damages are not restricted to the limits of the county court jurisdiction; see pp. 438 *et seq.*, *post*.

(*n*) Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 126; County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 133—137. No other cause of action may be joined with an action of replevin, and the issue may be tried with a jury (County Court Rules, Ord. 34, rr. 1, 3). For the law and practice of replevin generally in all courts, see title DISTRESS AND REPLEVIN.

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 134.

SECT. 1. Ordinary Jurisdiction of County Court.

conditioned that he shall commence the action within one week from the date thereof, and shall prove before the High Court that he had good grounds for believing that the title of some hereditament the annual value whereof exceeded £20 was in question (*p*).

Attachment of debts.

922. Under the Common Law Procedure Acts the county court has jurisdiction to order the examination of a debtor and the attachment of debts in a manner analogous to that in use in the High Court (*q*).

SUB-SECT. 2.—*Exceptions to the Ordinary Jurisdiction.*

High Court judgments.

923. No action may be brought in the county court on any judgment of the High Court (*r*).

Title to land.

924. Except in cases where the value of lands, tenements or hereditaments, or the rent payable in respect of them, does not exceed £100 (*s*), the county court has no jurisdiction in any action of ejectment, or in any action in which the title to any corporeal or incorporeal hereditaments is in question (*a*). To oust the jurisdiction of the county court on the ground that title is in question it is necessary both that there should be a *bonâ fide* claim and that the right claimed should be one which in point of law is capable of existence (*b*). If the fact that title is in question appears upon the face of the proceedings, the jurisdiction of the county court is ousted (*c*). If the question of title does not appear on the face of the proceedings, the judge should inquire whether such a question really arises (*d*), and, if it does not, he should proceed with the case (*e*). If it appears that title is *bonâ fide* in question, the judge cannot enter in the smallest degree into the merits of the case (*f*), nor can he derive jurisdiction from the fact that he believes the document upon which the alleged title exists to be a forgery or that there is no evidence to go to a jury in support of the alleged title (*g*).

When title is in question.

No general rule can be laid down as to when title to any corporeal or incorporeal hereditament comes in question. Title to a corporeal

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 135.

(*q*) Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 60—67; Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), ss. 28—31; County Court Rules, Ord. 25, r. 71, and Ord. 26. These sections were applied to county courts *mutatis mutandis* by Orders in Council dated November 18, 1867, and May 18, 1870, respectively, and the above-named sections have been preserved by the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), s. 7. For the practice in attachment, see p. 570, *post*.

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 63.

(*s*) As to which, see p. 435, *post*.

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56.

(*b*) *Lloyd* v. *Jones* (1848), 6 C. B. 81; *Howorth* v. *Sutcliffe*, [1895] 2 Q. B. 358, C. A.

(*c*) *Timothy* v. *Farmer* (1849), 7 C. B. 814; *Tinniswood* v. *Pattison* (1846), 3 C. B. 243.

(*d*) *Emery* v. *Barrett* (1858), 4 C. B. (N. S.) 423.

(*e*) *Lilley* v. *Harvey* (1848), 17 L. J. (Q. B.) 357; *Wickham* v. *Lee* (1848), 12 Q. B. 521.

(*f*) *Mountnoy* v. *Collier* (1853), 1 E. & B. 630.

(*g*) *Ile Marsh* v. *Dewes* (1853), 17 Jur. 558.

hereditament is in question where, as between landlord and tenant, a dispute arises whether the whole or only part of the premises have been demised, or whether there has been any letting at all (*h*). In the case of an incorporeal hereditament, title is in dispute where the existence of the hereditament or the right to it is in dispute (*i*). An action for trespass to land to which the plaintiff has an undisputed possessory title is not an action in which the title to a corporeal hereditament is in question (*k*), but a claim to an easement, in which the plaintiff cannot succeed without proving his title to the easement, is not within the jurisdiction of the county court where the annual value of the land to which the easement is referable exceeds the limit of the jurisdiction (*l*).

The expression "corporeal or incorporeal hereditaments" includes leaseholds (*m*). An incorporeal hereditament may consist of such an office as that of a parish clerk (*n*), but not a local rate (*o*), nor a custom (*p*).

Toll, fair, market or franchise.

925. The county court has no jurisdiction in any action in which any toll, fair, market, or franchise is in question (*q*). The word "toll" includes a tonnage rate payable by ships to certain harbour authorities (*r*), but does not include a charge by a railway company for bringing back empty coal trucks made under its private Act (*s*). The word "franchise" does not include a right claimed by custom (*t*). The grant of letters patent for a new invention is a "franchise," and a county court has no jurisdiction to try an action for the infringement of a patent where the validity thereof is in dispute (*a*). Although a registered trade mark is not a "franchise" within the meaning of this limitation,

(*h*) *Chew* v. *Holroyd* (1852), 8 Exch. 249; and see *Re Knight, Gwynne* v. *Knight* (1847), 1 Exch. 802; *R.* v. *Harden* (1852), 22 L. J. (Q. B.) 299; *Re Baddeley, Baddeley* v. *Denton* (1849), 4 Exch. 508.

(*i*) *Marwood* v. *Waters* (1853), 13 C. B. 820.

(*k*) *Hawkins* v. *Rutter*, [1892] 1 Q. B. 668.

(*l*) *Howorth* v. *Sutcliffe*, [1895] 2 Q. B. 358, C. A.

(*m*) *Tomkins* v. *Jones* (1889), 22 Q. B. D. 599, C. A.

(*n*) *Stephenson* v. *Raine* (1853), 2 E. & B. 744.

(*o*) *Re Stuart* v. *Jones* (1852), 1 E. & B. 22; *Re Baddeley, Baddeley* v. *Denton, supra*. Where a local Act makes a rate payable in the first instance by a tenant and recoverable by him from his landlord, the action by the tenant to recover such rate from the landlord is not one in which title to "an incorporeal hereditament" arises (*Re Knight, Gwynne* v. *Knight, supra*).

(*p*) *Lloyd* v. *Jones* (1848), 8 C. B. 81; *Davis* v. *Walton* (1852), 8 Exch. 153.

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56. For tolls etc., see titles HIGHWAYS, STREETS, AND BRIDGES; MARKETS AND FAIRS; for franchises generally, see titles CONSTITUTIONAL LAW, Vol. VI., pp. 489 *et seq.*; REAL PROPERTY AND CHATTELS REAL.

(*r*) *R.* v. *Everett* (1852), 1 E. & B. 273, also reported *sub nom. Adey* v. *Trinity House* (*Deputy Master*) (1853), 22 L. J. (Q. B.) 3, where a dispute as to whether such a rate was payable in respect of two voyages or only in respect of one was held not within the county court jurisdiction.

(*s*) *Hunt* v. *Great Northern Rail. Co.* (1851), 10 C. B. 900, where a dispute as to the amount of such charge and the time within which it was payable was held within the county court jurisdiction.

(*t*) *Davis* v. *Walton, supra* (custom of the Thames to place vessels so that they project over adjoining wharves).

(*a*) *R.* v. *Halifax County Court Judge*, [1891] 2 Q. B. 263, C. A.

SECT. 1. Ordinary Jurisdiction of County Court.

yet an action for an injunction to restrain the infringement of a registered trade mark is not within the jurisdiction of the county court (*b*). The words "fair or market" do not appear to have been the subject of judicial decision in this connection.

Libel, seduction etc.

926. The county court has no jurisdiction in any action for libel or slander, or for seduction, or for breach of promise of marriage (*c*).

Remitted actions of contract or tort.

927. With regard to all the above exceptions it should be noted that actions both of contract and of tort, which may include some of the excepted cases, may in certain circumstances be remitted to the county court, which then obtains complete derivative jurisdiction over them (*d*).

SUB-SECT. 3.—*Jurisdiction under the Judicature Acts.*

Powers under Judicature Acts.

928. Every county court, as regards all causes of action within its jurisdiction for the time being, has power to grant, and must grant, in any proceeding (*e*) before it, such relief, redress or remedy, or combination of remedies, either absolute or conditional, and must give effect to every ground of defence or counterclaim, equitable or legal (subject to special provisions as to counterclaims (*f*)), in as full and ample a manner as might and ought to be done in the like case by the High Court (*g*). The several rules of law enacted and declared by the Judicature Act, 1873, are in force and must receive effect in the county court in matters within its jurisdiction (*h*).

Specific performance.

929. The powers conferred by the Judicature Acts include a power to order specific performance of an agreement (*i*), but not where the subject-matter of the agreement exceeds the limit of the county court jurisdiction (*k*).

Interlocutory matters generally.

930. A county court judge has, whether within the district of any of his courts or not, jurisdiction to make any order, or exercise on an *ex parte* application any authority or jurisdiction in any action or proceeding pending in any of the courts of which he is judge, which, if the same related to an action or proceeding pending in

(*b*) *Bow* v. *Hart*, [1905] 1 K. B. 592, C. A.

(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56.

(*d*) See generally pp. 438 *et seq.*, *post*.

(*e*) The words "any proceeding" mean "any action," and do not include a step in an action governed by procedure which is solely applicable to the superior court (*Pryor* v. *City Offices Co.* (1883), 10 Q. B. D. 504, C. A.).

(*f*) See p. 433, *post*.

(*g*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 89.

(*h*) *Ibid.*, s. 91. The rules of law are set out in *ibid.*, ss. 24, 25, and in the Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10. See titles CHOSES IN ACTION, Vol. IV., pp. 367 *et seq.*; CONTRACT, Vol. VII., pp. 334, 413, 471, 496 *et seq.*; INJUNCTION; MORTGAGE; TRUSTS AND TRUSTEES.

(*i*) *McGregor* v. *McGregor* (1887), 57 L. J. (Q. B.) 268, 591, C. A. (agreement for separation between husband and wife).

(*k*) *Foster* v. *Reeves*, [1892] 2 Q. B. 255, C. A. (agreement for lease of premises over £500 in value). As to the equitable jurisdiction of the county court, see p. 443, *post*.

the High Court, might be given, made, or exercised by a judge of the High Court in chambers, and, with the consent of both parties to an action or proceeding, to hear and decide any matter at any place, either within or without any such district (*l*).

Mandamus.

931. Under the Judicature Acts the county court apparently may grant a mandamus in a manner analogous to that which might have been granted by the common law courts under the Common Law Procedure Act, 1854 (*m*), but has no power to grant a prerogative writ of mandamus, which can only be exercised by the King's Bench Division of the High Court (*n*).

Injunction.

932. Where an injunction is an appropriate remedy (*o*) and in actions within its jurisdiction, the county court may grant an injunction and may enforce obedience of the order by committal (*p*), and moreover may grant an injunction alone against a breach of agreement without damages, provided that the parties have by the contract itself assessed the damages at less than the amount limited by the jurisdiction or that, if damages were claimed, the sum recovered could not exceed that amount (*q*). No cause or matter pending in the High Court or in the Court of Appeal may be restrained by injunction of the county court (*r*).

Receiver.

933. The county court has in cases within its jurisdiction, and where expedient, power to appoint a receiver before, at, or after the trial of the action (*s*).

Committal.

934. The powers conferred by the Judicature Acts include the jurisdiction of a county court judge to commit to prison by attachment for disobedience of an order of the court (*t*).

Counterclaim.

935. The county court has jurisdiction to try counterclaims by virtue of the Judicature Acts. Where in any proceeding any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the county court, such defence or counterclaim does not affect the competence or the duty of such court to dispose of the whole matter in controversy so far as relates to the demand

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 9. This jurisdiction is supplemented by the powers conferred on the county court in interlocutory matters under the Judicature Acts, which are set out below. For the practice on interlocutory matters, see p. 503, *post*.

(*m*) 17 & 18 Vict. c. 125, s. 68.

(*n*) *Glossop* v. *Heston and Isleworth Local Board* (1879), 12 Ch. D. 102, 115, 122, C. A. For the writ of mandamus, see, generally, title CROWN PRACTICE.

(*o*) See, generally, title INJUNCTION.

(*p*) *Martin* v. *Bannister* (1879), 4 Q. B. D. 491, C. A.; *Richards* v. *Cullerne* (1881), 7 Q. B. D. 623, C. A.

(*q*) *Stiles* v. *Ecclestone*, [1903] 1 K. B. 544.

(*r*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24 (5); *Cobbold* v. *Pryke* (1879), 4 Ex. D. 315.

(*s*) This is one of the powers granted under the Judicature Acts (see p. 432, *ante*), and is specially provided for in the County Court Rules, Ord. 13, r. 1. For the practice, see p. 505, *post*.

(*t*) *Martin* v. *Bannister*, *supra* (disobedience of an injunction); *Richards* v. *Cullerne*, *supra*; and *Hymas* v. *Ogden*, [1905] 1 K. B. 246, C. A. (disobedience of interlocutory orders).

SECT. 1. Ordinary Jurisdiction of County Courts.

of the plaintiff and the defence thereto (*u*). The jurisdiction of the county court is not excluded by reason (1) that any such counterclaim involves matter not within the local jurisdiction of such county court, but within the jurisdiction of any other inferior court in England; or (2) that where the counterclaim involves more than one cause of action, as to each of which the defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the court, the aggregate amount of the counterclaim exceeds the jurisdiction of the court; or (3) that the counterclaim is for an amount of money exceeding the jurisdiction of the court, provided that the plaintiff does not object in writing, within such time as may be prescribed by any rules, to the court giving relief exceeding that which the court would have had jurisdiction to administer prior to the commencement of the Judicature Act, 1884 (*a*).

Adjournment where counterclaim exceeds in amount the jurisdiction.

In any case where the counterclaim involves matter beyond the jurisdiction of the court, notwithstanding the aforesaid provisions, the court may, on such terms (if any) as the court may think just, either adjourn the hearing of the case, or stay execution on the judgment, for such time as may be necessary to enable any party to apply to remove the proceedings into the High Court or to enable the defendant to prosecute in a court of competent jurisdiction an action for the purpose of establishing his counterclaim; and in default of any such application being made, or action brought, the county court, after the expiration of the time limited, has jurisdiction to hear and determine the whole matter in controversy, to the same extent as if all parties had consented thereto (*a*).

Transfer of counterclaim to High Court.

In any case of a counterclaim not being within the limit of the county court jurisdiction, the High Court or a judge thereof may, on the application of any party to the proceeding, order the whole proceeding to be transferred to the High Court, where it must be continued and prosecuted as if it had been originally commenced there (*b*). The record of the proceeding must be transmitted by the registrar to the High Court (*c*).

Interpleader.

936. Under the Judicature Acts the county court has within the limits of its jurisdiction power to try interpleader issues originated in the county court apart from its derivative jurisdiction over such issues transferred from the High Court (*d*).

SUB-SECT. 4.—*Jurisdiction by Consent.*

Jurisdiction by consent.

937. With respect to all actions assigned to the King's Bench Division of the High Court, if both parties agree by a memorandum

(*u*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 90.

(*a*) 47 & 48 Vict. c. 61, s. 18.

(*b*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 90. The application must be by summons and not *ex parte* (*Anon.*, [1876] W. N. 12). After transfer, the practice of the High Court applies to all further proceedings in the action (*Davies* v. *Williams* (1879), 13 Ch. D. 550).

(*c*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 90.

(*d*) See *ibid.*, s. 89. For the jurisdiction in interpleader issues transferred from the High Court, see p. 443, *post*; and see, generally, title INTERPLEADER.

signed by them or their respective solicitors that the county court judge of any court therein named shall have power to try such action, the said judge has jurisdiction to try the same at the said court (*e*). The memorandum must be filed on entering the plaint, and thereafter the county court rules and practice will apply so far as applicable (*f*). Where an action has been commenced in the High Court, and the parties agree to try the same in the county court under this provision, the action must be commenced *de novo* in the county court (*g*). Where an action or matter has been commenced in the county court over which the county court has no jurisdiction the judge must order it to be struck out, unless the parties consent to the court having jurisdiction (*h*).

Jurisdiction by consent in cases of title.

938. In any action to which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, incidentally comes in question, the judge has power to decide the claim which it is the immediate object of the action to enforce, if both parties at the hearing consent in any writing signed by themselves or their solicitors; the judgment of the court thereon is not evidence of title between the parties or their privies in any other action or matter in the county court or in any other court, and the consent does not prejudice or affect any right of appeal of either of the parties to the original action (*i*).

SECT. 2.—*Jurisdiction in Actions affecting Real Property.*

SUB-SECT. 1.—*Ejectment.*

Jurisdiction in ejectment.

939. All actions of ejectment, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect of them, exceeds the sum of £100 by the year, may be brought and prosecuted in the county court, the venue being the court of the district in which the lands, tenements, or hereditaments are situate, provided that the defendant in any such action or his landlord may within one month from the day of service of the summons apply to a judge of the High Court in chambers for a summons to the plaintiff to show cause why the action should not be tried in the High Court on the ground that the title to lands or hereditaments of greater annual value than £100 would be affected by the decision in the action. If the judge of the High Court is satisfied that this would result, he may order the action to be tried in the High Court, and all proceedings in the county court will thereupon be discontinued (*k*).

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 64.

(*f*) County Court Rules, Ord. 5, r. 2. For form of memorandum, see County Court Rules, Appendix, Form 13.

(*g*) *Pearce* v. *Winkworth* (1873), 28 L. T. 710.

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 114. As to costs in such a case, see p. 594, *post*.

(*i*) *Ibid.*, s. 61; and see p. 431, *ante*. For form of consent, see County Court Rules, Appendix, Form 13. As to scales of costs in such cases, see p. 594, *post*.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 59; County Courts Act,

SECT. 2. Jurisdiction in Actions affecting Real Property.

Conditions of jurisdiction.

An action of ejectment should not be brought (*l*) if the relief sought by the plaintiff can be given in an action for recovery of possession (*m*). The value of the lands means their actual marketable value, and not the value of the plaintiff's interest in them (*n*). The rent payable means the rent paid by the defendant to the plaintiff, and not the amount received by him from a sub-tenant (*o*). Where before trial an unsuccessful application is made for prohibition on the ground that the annual value exceeds the amount limited by the jurisdiction, the defendant at the trial cannot give evidence that the annual value exceeds that amount (*a*).

SUB-SECT. 2.—*Recovery of Possession.*

Recovery of possession.

940. An action for recovery of possession of any corporeal hereditament is appropriately brought by a landlord, (1) where the tenant holds over and neglects or refuses to deliver up possession after the determination of his term or interest, whether by expiry thereof or by notice to quit; and (2) where the rent is in arrear for six months, and the landlord has the right by law to re-enter for the non-payment thereof.

The limit of jurisdiction is the same as in ejectment (*b*).

Where tenancy determined by effluxion of time.

In the first case the landlord may issue a plaint against the tenant claiming recovery of the premises, and with such claim may join a claim for rent or mesne profits—or against any person claiming by, through, or under the tenant, and refusing or neglecting to deliver up possession. The defendant may appear to the summons and show cause why an order should not be made, but in default of his doing so the judge may, on proof of the plaintiff's case, make an order for delivery up of the premises on a fixed day. If such order be not obeyed the registrar must issue a warrant to the bailiff of the court authorising and requiring him to give the plaintiff possession (*c*).

Where rent in arrear.

In the second case the landlord may issue a summons claiming possession, and the service of the summons stands in lieu of a demand and re-entry. If the tenant pays into court five clear days before the return day all rent in arrear and the costs, the action ceases; but if he does not make such payment, nor show cause to the contrary, the judge, upon proof of the plaintiff's case, may order possession of the premises to be given on a day

1903 (3 Edw. 7, c. 42), s. 3. As to delivery of summons to the bailiff and service thereof, see p. 469, *post*.

(*l*) County Court Rules, Ord. 5, r. 3. In the event of an action of ejectment being brought where the other form of procedure could have been employed, the plaintiff can only obtain the relief and costs applicable to the latter (*ibid.*).

(*m*) See the sub-section following.

(*n*) *Elston* v. *Rose* (1868), L. R. 4 Q. B. 4. The ground rent payable by the landlord cannot be deducted from the rent of the tenant to bring the amount within the limit of the jurisdiction (*ibid.*).

(*o*) *Brown* v. *Cocking* (1868), L. R. 3 Q. B. 672.

(*a*) *Symons* v. *Rees* (1876), 1 Ex. D. 416.

(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 138, 139; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3.

(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 138; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3, and see note (*e*), p. 437, *post*. As to service of summons and procedure generally, see p. 469, *post*.

named, being not less than four weeks from the day of hearing. If within the time so limited all rent in arrear and costs are not paid into court, and if such order be not obeyed, and the rent and costs are not paid, the registrar, at the instance of the plaintiff, must issue a warrant to the bailiff as in the first case. Upon execution of the warrant the premises are held by the plaintiff discharged of the tenancy (*d*).

Interpretation of provisions.

These provisions only apply where the ordinary relation of landlord and tenant exists (*e*). The term "landlord" means the person entitled to the immediate reversion of the lands in question, or if the property is held in joint tenancy, coparcenary, or tenancy in common, any one of the persons entitled to such reversion (*f*).

What is included in this jurisdiction

941. The jurisdiction given by these provisions is that of deciding whether the landlord has a lawful right of possession (*g*), but does not include the power of determining whether the plaintiff has title as landlord; and therefore a *bonâ fide* claim of ownership by the alleged tenant will, except where the case is within the limit of jurisdiction (*h*), oust the jurisdiction of the county court (*i*), subject to a duty on the part of the judge to inquire into the facts upon which the claim is based (*k*).

Effect of High Court action in ejectment.

942. The fact that the action of ejectment is pending in the High Court is not a bar to the plaintiff proceeding in the county court to recover possession of the same tenement (*l*), but in such a case the court must adjourn the trial until the pending action is discontinued (*m*).

District for commencing action.

943. In cases where the jurisdiction exists the action must be brought in the county court of the district in which the hereditaments are situated, and no other county court has jurisdiction (*n*), and an issue raised may be tried by a jury.

(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 139; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3; and see note (*e*), *infra*. As to service of summons and warrant of possession, see pp. 469, 568, *post*. For the requisite forms, see County Court Rules, Appendix, Forms 247—251.

(*e*) *Jones* v. *Thomas* (1861), 4 L. T. 210; *Jones* v. *Owen* (1848), 18 L. J. (Q. B.) 8, where a mortgagee was held not entitled to recover possession from a person entering into occupation subsequently to the mortgage and not having become his tenant; *Banks* v. *Rebbeck* (1851), 20 L. J. (Q. B.) 476 (defendant in possession under an agreement to purchase having satisfied purchase-money); and see *Jarrow Building Society* v. *Travers* (1889), 88 L. T. Jo. 48; and title LANDLORD AND TENANT.

(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 186.

(*g*) As, for instance, whether a lease was determined or not.

(*h*) See p. 438, *post*.

(*i*) *Kerkin* v. *Kerkin* (1854), 3 E. & B. 399; *Pearson* v. *Glazebrook* (1867), L. R. 3 Exch. 27; and see *Crowley* v. *Vitty* (1852), 7 Exch. 319; *Re Emery* v. *Barnett* (1858), 4 C. B. (N. S.) 423.

(*k*) *Re Fearon* v. *Nowall* (1848), 17 L. J. (Q. B.) 161. Where the question is as to the determination of the tenancy by notice to quit, the judge's decision is conclusive between the parties (*ibid.*).

(*l*) *Bissill* v. *Williamson* (1861), 7 H. & N. 391.

(*m*) County Court Rules, Ord. 22, r. 11.

(*n*) *Ellis* v. *Peachy* (1849), 18 L. J. (Q. B.) 137; and see County Court Rules, Ord. 22, r. 3.

SECT. 2. Jurisdiction in Actions affecting Real Property.

Order for possession.

944. An order for delivery of possession of the premises, made against a person holding under the tenant, is not conclusive evidence of title in a subsequent action for mesne profits (*o*). A warrant of possession obtained by a landlord proceeding against his tenant, but not against the person actually in possession, is not conclusive against the latter, who may, notwithstanding the warrant, bring an action of trespass against the landlord if he had not in fact a right to possession (*p*).

SUB-SECT. 3.—*Where Title in Question.*

Jurisdiction where title in question.

945. A county court judge has jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments (*q*) comes in question, where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof (*r*) exceeds the sum of £100 by the year, or, in case of an easement or licence, where neither the value nor reserved rent of the lands, tenements, or hereditaments in respect of which the easement or licence is claimed exceeds £100 by the year (*s*).

Under this provision the county court has jurisdiction to try an action to recover arrears of a rent-charge of £10 a year issuing out of lands admittedly of a greater annual value than the amount limited by the jurisdiction (*t*), or an action in which a party-wall alone is in dispute, although the whole premises may be rented at an amount greater in the same respect (*a*), but not an action claiming an easement over lands of such greater annual value where proof of title to the easement is essential to the case (*b*).

SECT. 3.—*Remitted Actions.*

SUB-SECT. 1.—*Actions of Contract.*

Remitted actions of contract.

946. Where in any action of contract brought in the High Court the claim indorsed on the writ does not exceed £100, or where such claim, though it originally exceeded £100, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding £100, either party to the action at any time, if the whole or part of the demand of the plaintiff is contested, may apply to a judge or master or district registrar (*c*) of the High Court at chambers to order the action to be tried in any county court in which the action might

(*o*) *Campbell* v. *Loader* (1864), 3 H. & C. 520.

(*p*) *Hodson* v. *Walker* (1872), L. R. 7 Exch. 55.

(*q*) As to what these hereditaments include and when they come in question, see p. 430, *ante*.

(*r*) As to value and rent in this connection, see p. 430, *ante*.

(*s*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 60; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3. As to the general exceptions to the county court jurisdiction including questions of title, see p. 430, *ante*.

(*t*) *Bassano* v. *Bradley*, [1896] 1 Q. B. 645.

(*a*) *Stolworthy* v. *Powell* (1886), 55 L. J. (Q. B.) 228.

(*b*) *Howorth* v. *Sutcliffe*, [1895], 2 Q. B. 358, C. A.

(*c*) The jurisdiction of the two last-named officers exists under R. S. C., Ord. 54, r. 12, and Ord. 35, r. 6; see *Walsh* v. *Smith* (1874), 30 L. T. 304. The application is by summons, and must be supported by the necessary affidavits (*ibid.*). For forms of order, see R. S. C., Appendix K, Forms 44, 45.

have been commenced, or in any court convenient thereto (*d*), and on the hearing of the application the judge or master or district registrar must, unless there is good cause to the contrary, order the action to be tried accordingly (*e*).

Actions which cannot be remitted.

947. An action cannot be remitted to the county court where the claim indorsed on the writ exceeds £100—as, for instance, where it is for £100 and interest (*f*)—or where the payment reducing the amount claimed below £100 is made after action brought, whether such payment be made to the plaintiff himself (*g*) or into court (*h*) or under an order under R. S. C., Ord. 14 (*i*), or where the reduction is made by abandonment on the part of the plaintiff (*k*). The principles of the reduction of a claim by an admitted set-off have already been dealt with, and are applicable to the case of remitted actions (*l*). Where the claim is for unliquidated damages the action cannot be remitted, even though the claim as indorsed on the writ is for a specified sum (*m*). Where leave is obtained to amend a writ reducing the amount claimed below £100 the action can be remitted, even though the original claim exceeded that amount (*n*).

Subject to the principles stated above, an order to remit an action can be made where there is a counterclaim for unliquidated damages (*o*), although a counterclaim alone cannot be remitted if the action in which it was set up has been discontinued (*p*).

Discretion of High Court.

948. The order is in the discretion of the court, and may be refused where an important question of mercantile law will probably arise on the contract sued upon (*q*), and the application for the order should be adjourned where there is an honest intention to apply for summary judgment (*r*).

(*d*) These words include all county courts in which the action might have been commenced as of right (*Curtis* v. *Stovin* (1889), 22 Q. B. D. 513, C. A.); or with leave (*Burkill* v. *Thomas*, [1892] 1 Q. B. 312, C. A.). The words "convenient thereto" mean convenient from the point of view of the parties (*Burkill* v. *Thomas*, as reported [1892] 1 Q. B. 99).

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 65.

(*f*) *Insley* v. *Jones* (1878), 4 Ex. D. 16; *Dierken* v. *Philpot*, [1901] 2 K. B. 380.

(*g*) *Osborne* v. *Homburg* (1875), 1 Ex. D. 48.

(*h*) *Foster* v. *Usherwood* (1877), 3 Ex. D. 1, C. A.

(*i*) *Hodgson* v. *Bell* (1890), 24 Q. B. D. 525, C. A.

(*k*) *Dierken* v. *Philpot*, *supra*.

(*l*) See p. 429, *ante*.

(*m*) *Knight* v. *Abbott, Page & Co.* (1882), 10 Q. B. D. 11; *Bassett* v. *Tong*, [1894] 2 Q. B. 332. Where, however, in a remitted action a claim was made for a liquidated sum for demurrage, and at the trial the plaintiff failed to prove an agreement to pay the same, it was held that the county court judge had jurisdiction under s. 87 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), to amend the particulars by substituting a claim for unliquidated damages (*Spencer, Whatley and Underhill* v. *Forster & Co.*, [1905] 1 K. B. 434).

(*n*) *Sneade* v. *Wotherton Barytes and Lead Mining Co.*, [1904] 1 K. B. 295 C. A.

(*o*) *Guilford* v. *Lambeth*, [1894] 2 Q. B. 832.

(*p*) *R.* v. *City of London Court Judge*, [1891] 2 Q. B. 71; *Kirschman* v. *Fitch* (1891), 7 T. L. R. 475.

(*q*) *Ginner* v. *King* (1890), 34 Sol. Jo. 294.

(*r*) Under R. S. C., Ord. 14 (*Smith* v. *Hurley*, [1884] W. N. 99).

SECT. 3. **Remitted Actions.**

Procedure after order to remit.

949. When the action is remitted by an order made under the above provisions, the plaintiff must lodge with the registrar of the county court the order, or a duplicate, and the writ, and a copy or copies of an affidavit or affidavits on which the order was made, and also a statement of the names and addresses of the several parties to the action or matter, and their solicitors, if any, and a concise statement of the particulars of claim, such as would be required upon entering a plaint, signed by the plaintiff or his solicitor. The registrar must thereupon enter the action or matter for trial and give notice to the parties of the day appointed for such trial, by post or otherwise, ten clear days before such day, and must annex to the notice to the defendant a copy of the particulars. The registrar must forthwith indorse on the order, or duplicate thereof, the date on which the same was lodged and file the same, and the action or matter proceeds in all things as if it were an ordinary action (*s*).

Until this has been done the action remains in the High Court, and that court has jurisdiction to make an interlocutory order in it (*a*).

Effect of order to remit.

950. As soon as the transfer is complete the jurisdiction of the High Court ceases absolutely (*b*). The county court obtains complete jurisdiction, and the action then follows the ordinary procedure of the court (*c*). An objection to the jurisdiction in the making of the order to remit which was not raised at chambers cannot be taken in the county court (*d*), nor can the county court judge go behind the order or inquire into its validity (*e*).

Transfer of money paid into High Court.

Any money paid into the High Court, or into a district registry, in an action which is subsequently remitted or transferred to the county court must be transmitted to the registrar of the latter court, and becomes subject to the order thereof as if it had been originally paid in there (*f*).

(*s*) County Court Rules, Ord. 33, rr. 1, 2. For the requisite forms, see County Court Rules, Appendix, Forms 280—283.

(*a*) *D'Errico* v. *Samuel*, [1896] 1 Q. B. 163, C. A.; *Welply* v. *Buhl* (1878), 3 Q. B. D. 253, C. A. (extending time for giving security for costs); *Hemming* v. *Davies*, [1898] 1 Q. B. 660.

(*b*) *Duke* v. *Davis*, [1893] 2 Q. B. 260, C. A.

(*c*) *Moody* v. *Steward* (1870), L. R. 6 Exch. 35; *Bowles* v. *Drake* (1881), 8 Q. B. D. 325, C. A.; *R.* v. *Bayley* (1882), 8 Q. B. D. 411; County Court Rules, Ord. 33, rr. 2, 3. The county court judge should take cognisance of the allegations in the original statement of claim, and, if asked to, should receive evidence in support of the allegations therein (*Johnson* v. *Palmer* (1879), 4 C. P. D. 258). The jurisdiction to grant a new trial or order taxation of costs or add parties is in the county court (*Moody* v. *Steward, supra*; *Duke* v. *Davis, supra*; *R.* v. *Clerkenwell County Court Judge* (1890), 7 T. L. R. 40). As to the costs in remitted actions, see pp. 586 *et seq.*

(*d*) *Dierken* v. *Philpot*, [1901] 2 K. B. 380.

(*e*) *Blades* v. *Lawrence* (1874), L. R. 9 Q. B. 374; but where special circumstances are proved at the trial impeaching the validity of the order, it seems that the judge may adjourn the trial and make a special return to the High Court of such circumstances (*R.* v. *Marylebone County Court Judge* (1883), 50 L. T. 97).

(*f*) County Court Rules, Ord. 33, r. 3A. For form of application to transmit money in such a case, see County Court Rules, Appendix, Form 283A. See also R. S. C., Ord. 22, r. 13A, Appendix B, Part II., Form 4A.

SECT. 3. Remitted Actions.

Where a county court registrar or his partner or clerk has acted as solicitor for any party in the High Court in an action subsequently remitted to the county court of which he is registrar, the action must be transferred to another county court (*g*).

Appeal against order.

951. An appeal lies from the order to remit to the judge and with leave to the Court of Appeal. Where the application for an order has been refused the Court of Appeal will seldom if ever review the decision (*h*), and where it has been granted will not generally interfere unless the decision is obviously wrong (*i*).

SUB-SECT. 2.—*Actions of Tort.*

Remitted actions of tort.

952. Any person against whom an action of tort (*k*) is brought in the High Court may make an affidavit that the plaintiff has no visible means (*l*) of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of the High Court or a master or district registrar (*m*) may make an order staying all proceedings in the action unless the plaintiff shall, within a time mentioned in the order, give full security for the defendant's costs to the satisfaction of one of the masters of the Supreme Court, or satisfy a judge of the High Court that he has a cause of action fit to be prosecuted in the High Court, or, in the event of his failing to comply with either of these requirements, the action may by the order be remitted for trial to the county court therein mentioned (*n*).

Actions outside county court jurisdiction.

An action of tort which could not have been commenced in the county court may be remitted to it under this provision (*o*), the

(*g*) County Court Rules, Ord. 33, r. 19. The power to transfer in such a case exists under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 85.

(*h*) *Palmer* v. *Roberts* (1873), 29 L. T. 403.

(*i*) *Jennings* v. *London General Omnibus Co.* (1874), 30 L. T. 266; *Owens* v. *Woosman* (1868), L. R. 3 Q. B. 469.

(*k*) In an action where there are distinct claims in contract and tort, and the defendant asks for an order under these provisions, it seems that the plaintiff must have abandoned the claim in contract (*M'Donnell* v. *Kavanagh* (1877), 37 L. T. 444).

(*l*) By the term "visible means" is intended such means as could be fairly ascertained by a reasonable person in the position of the defendant; the judge should exercise a judicial discretion in construing the term (*Lea* v. *Parker* (1884), 13 Q. B. D. 835, C. A.). If there are two plaintiffs the order cannot be made on the ground that one of them is insolvent (*Sykes* v. *Sykes* (1869), 38 L. J. (C. P.) 281). An affidavit is necessary (*R.* v. *Marylebone County Court Judge* (1883), 50 L. T. 97).

(*m*) The two latter have jurisdiction by virtue of R. S. C., Ord. 54, r. 12, and Ord. 35, r. 6.

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 66. A counterclaim in tort alone is not an "action" which can be remitted under this section (*Delobbel-Flipo* v. *Varty*, [1893] 1 Q. B. 663). An application to dismiss for want of prosecution should be made in the High Court, and in default thereof the county court judge is bound to hear the case, although there may be delay in lodging the order (*R.* v. *Holroyd* (1883), 32 W. R. 370).

(*o*) *Stokes* v. *Stokes* (1887), 19 Q. B. D. 419, C. A. (decided under the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 67, and County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 10, which were repealed and reproduced in the sections of the County Courts Act under consideration).

SECT. 3. Remitted Actions.

mere fact that the damages, if any, would probably exceed the limit of the county court jurisdiction being no bar to remitting the action where necessary (*p*).

Affidavit necessary.

The defendant must support the application by an affidavit as to the plaintiff's want of means (*q*) and satisfy the judge or master upon this point (*r*).

Grounds for refusal of order.

In order to resist successfully an order to remit to the county court the plaintiff, if unable to prove means or give security for costs, must show that he has a cause of action fit to be prosecuted in the High Court (*s*). No general rule can be laid down as to whether a cause of action is fit to be prosecuted in the High Court (*t*).

Notice of defence in libel action.

953. Where in an action for libel or slander remitted to the county court under these provisions the defendant intends to avail himself of the provisions of the Libel Act, 1843 (*a*), he must give notice to the registrar in writing of his intention five clear days at least before the day appointed for the trial of the action (*b*).

Stay of proceedings.

After the action has been remitted the county court judge has power to make an order staying the same until the plaintiff has paid the costs of a previous action brought by him against the same defendant (*c*).

Procedure generally.

In all other respects the jurisdiction and practice of the county court with regard to remitted actions of tort are the same as in the case of remitted actions of contract (*d*).

SUB-SECT. 3.—*Equitable Actions.*

Remitted equitable actions.

954. Where any action or matter which might have been commenced in the county court is pending in the Chancery Division of the High Court any of the parties thereto may apply at chambers to the judge of that division, to whom the action or matter is attached, to have it transferred to the county court, or one of the county courts, in which it might have been commenced. The judge, upon or without such application, in his discretion may make an order for transfer, upon which order the action or matter must be carried on in the county court therein named, with a right

(*p*) This appears from the general words of the section in question.

(*q*) *R.* v. *Marylebone County Court Judge* (1883), 50 L. T. 97.

(*r*) *Lea* v. *Parker* (1884), 13 Q. B. D. 835, C. A.

(*s*) *Farrer* v. *Lowe* (1889), 53 J. P. 183; County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 66.

(*t*) The following cases are illustrations of such actions:—*Critchley* v. *Brown* (1886), 2 T. L. R. 238 (action by woman without means for slander imputing want of chastity); *Geoghegan* v. *Keegan* (1876), 11 I. R. C. L. 129 (action for slander where defendant refused to be put on terms not to plead a justification); *Doyle* v. *Bathe* (1871), 6 I. R. C. L. 6 (action of trespass in which question of title likely to arise).

(*a*) 6 & 7 Vict. c. 96, ss. 1, 2.

(*b*) County Court Rules Ord. 33, r. 4. For forms of notice, see County Court Rules, Appendix, Forms 86, 87.

(*c*) *R.* v. *Bayley* (1882), 8 Q. B. D. 411.

(*d*) See County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67, and pp. 438 *et seq.*, *ante*.

of appeal as if the action had been commenced in that county court (*e*).

If the amount in dispute is substantial, though within the county court jurisdiction, the transfer will not be ordered unless some good and special reason for the transfer be shown (*f*), but where the order has been made the court will not, except on strong grounds, interfere with the judge's discretion (*g*). The party applying must make the application *bonâ fide*, and if he is himself in default the order will be refused (*h*).

Reasons for remitting.

955. Where an action or matter has been transferred under these provisions, the registrar of the county court must apply to the county court judge for directions as to further steps in the action or matter, and the judge may give directions and make orders as to the day of hearing and notices to the parties (*i*). The High Court retains its jurisdiction over the action until all the necessary steps for transfer have been taken (*k*). In all other respects after transfer the action will proceed as if it were an ordinary action in the county court (*l*).

Application for directions.

SUB-SECT. 4.—*Interpleader Proceedings.*

956. If it appears to the High Court or a judge thereof that any proceeding in the High Court by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of £500, may be more conveniently tried in a county court, the court or judge may at any time order the transfer thereof to any county court in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question. The action after the order becomes a remitted action for purposes of jurisdiction and practice (*m*).

Remitted interpleader proceedings.

SECT. 4.—*Proceedings in Equity.*

SUB-SECT. 1.—*In General.*

957. The county court has, and may exercise, all the powers and authority of the High Court, and the county court judge and the officers of the county court have all the powers and authority of a judge or the officers respectively of the Chancery Division of the High Court in the following actions or matters (*n*):—

Jurisdiction in equity.

By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real, or personal and real, estate

(1) Administration actions.

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 69.
(*f*) *Picard* v. *Hine* (1868), 18 L. T. 705; *Sykes* v. *Firth* (1877), 46 L. J. (CH.) 627.
(*g*) *Linford* v. *Gudgeon* (1871), 6 Ch. App. 359.
(*h*) *Maudesley* v. *Maudesley* (1868), 18 L. T. 51.
(*i*) County Court Rules, Ord. 33, r. 8.
(*k*) *David* v. *Howe* (1884), 27 Ch. D. 533.
(*l*) County Court Rules, Ord. 33, rr. 1, 2; and see pp. 440 *et seq.*, *ante*.
(*m*) Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 18. For the law and practice of interpleader in all courts, see title INTERPLEADER.
(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67. As to the court

SECT. 4. Proceedings in Equity.

against, or for an account or administration of which, the demand may be made, does not exceed in amount or value the sum of £500 (*o*). This jurisdiction extends to the assignees, whether by act of law or for value, of the above-named persons (*p*); but a person interested in the estate of a deceased person is not entitled as of right to an administration order (*q*). The plaint need not contain an averment that the value of the estate to be administered does not exceed £500 (*r*). The same rules as to interest on debts in an administration action and as to interest on legacies apply in the county court as in the High Court (*s*).

(2) Trusts.

For the execution of trusts in which the trust estate or fund does not exceed in amount or value the sum of £500 (*t*). Constructive trusts as well as express trusts are within the county court jurisdiction under this provision (*a*).

(3) Foreclosure.

For foreclosure or redemption or for enforcing any charge or lien, where the mortgage, charge, or lien does not exceed in amount the sum of £500 (*b*). The fact that the right to redeem is disputed does not oust the jurisdiction of the county court (*c*). The limit of the county court jurisdiction depends upon the amount of the charge at the time the action is brought (*d*). The county court may entertain an action to enforce a charge or lien, even where the person who gave the charge has become bankrupt (*e*).

(4) Specific performance.

For specific performance of, or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase-money, or in the case of a lease the value of the property, does not exceed the sum of £500 (*f*). In the case of a sale the jurisdiction is determined by the actual amount of the purchase-money, and not by the value of the property (*g*); but where the value of the property exceeds the limit, the county court cannot decree

where these actions should be commenced and the procedure applicable thereto, see pp. 452, 481, *post*.

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (1). As to the law of administration generally, see title EXECUTORS AND ADMINISTRATORS.

(*p*) *Turner* v. *Rennoldson* (1873), 42 L. J. (CH.) 510.

(*q*) *Pearson* v. *Pearson* (1886), 56 L. T. 445.

(*r*) *Cheesewright* v. *Thorn* (1869), 38 L. J. (CH.) 615.

(*s*) County Court Rules, Ord. 24, rr. 24—26; R. S. C., Ord. 55, rr. 62, 63; and see title EXECUTORS AND ADMINISTRATORS.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (2); and see title TRUSTS AND TRUSTEES.

(*a*) *Clayton* v. *Renton* (1867), L. R. 4 Eq. 158.

(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (3); and see title MORTGAGE.

(*c*) *Powell* v. *Roberts* (1869), L. R. 9 Eq. 169.

(*d*) *Shields, Whitley and District Amalgamated Model Building Society* v. *Richards* (1901), 84 L. T. 587.

(*e*) *Medhurst* v. *Golder* (1867), 16 L. T. 50.

(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (4). By reason of the general words contained in this section, the extension of the powers of the Chancery Division under the Judicature Acts, in respect of specific performance, is made applicable to the county court. As to the extension of powers generally, see title SPECIFIC PERFORMANCE.

(*g*) *R.* v. *Whitehorne* (*Judge*), [1904] 1 K. B. 827, where the property, which was mortgaged, was in fact of greater value than £500.

specific performance of an executory agreement for a lease, and, it appears, cannot give effect to the equitable doctrine (*h*) that a person who enters under an executory agreement is to be treated as in possession under the terms of the agreement, unless the value of the property in question is within the above-named limit (*i*).

(5) Trustee Acts.

Under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the action or matter relates does not exceed in amount or value the sum of £500 (*k*).

(6) Infants.

Relating to the maintenance or advancement of infants in which the property of the infant does not exceed in amount or value the sum of £500 (*l*).

(7) Partnership.

For the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership does not exceed in amount or value the sum of £500 (*m*).

Intestacy and legacies.

The county court also has jurisdiction of a similar nature (which would seem to be partly included in the above-named jurisdiction) over any demand which does not exceed the sum of £100, and which is the whole or part of the unliquidated balance of a partnership account or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will (*n*). If proceedings are commenced under this provision, and not under the general equitable provisions, it is submitted that the county court jurisdiction is limited to the express words of the provision; and, therefore, if there is a pure trust where the actual intervention of trustees is necessary, the court has no jurisdiction (*o*), though, on the other hand, an action relating to the payment of a legacy from property left to executors on trust to sell and to pay certain legacies therefrom, if within the limit of amount, is within the jurisdiction of the county court (*p*). Similarly, under a plaint for a legacy, the county court has jurisdiction to entertain a claim for *devastavit* against an executor (*q*).

(*h*) As laid down in *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9, C. A.

(*i*) *Foster* v. *Reeves*, [1892] 2 Q. B. 255, C. A. It appears, however, from the report of this case that the general equitable jurisdiction given to the county court by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 89, was not considered.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (5); and see, generally, title TRUSTS AND TRUSTEES. The county court also has certain statutory jurisdiction under the Trustee Act, 1893 (56 & 57 Vict. c. 53), and the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35); see p. 691, *post*. For the payment into the county court of trust moneys etc., see p. 497, *post*.

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (6); and see, generally, title INFANTS AND CHILDREN.

(*m*) *Ibid.*, s. 67 (7); and see, generally, title PARTNERSHIP. The county court also has within the same limits jurisdiction in partition actions under the Partition Act, 1868 (31 & 32 Vict. c. 40), s. 12; see p. 675, *post*.

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 58; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3. This section has ceased to be of practical utility, because the county court possesses a wide equitable jurisdiction under s. 67 of the Act of 1888, and the three decisions cited *infra* are only applicable where an action has been commenced under this particular section.

(*o*) *Hewston* v. *Phillips* (1856), 11 Exch. 699.

(*p*) *Pears* v. *Wilson* (1851), 6 Exch. 833.

(*q*) *Winch* v. *Winch* (1853), 13 C. B. 128.

SECT. 4. Proceedings in Equity.

(8) Fraud or mistake.

For relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the sum of £500 (*r*). Under this provision the county court may set aside a deed of release of a judgment debt and costs obtained by fraud (*s*).

SUB-SECT. 2.—*Transfer of Equitable Actions to Chancery Division.*

Where subject-matter exceeds jurisdiction.

958. If, during the progress of any equitable action or matter in the county court, the judge is satisfied the subject-matter thereof exceeds the limit of the jurisdiction of the county court, he must direct the action to be transferred to the Chancery Division of the High Court, and the whole action thereafter becomes subject to the Rules of the Supreme Court, but the transfer does not affect the validity of any order already made in the county court (*t*). After an order of transfer the jurisdiction of the county court ceases, and an order made therein as to costs must be discharged without prejudice to any order as to costs which may be made in the High Court (*a*). If the want of jurisdiction is apparent on the plaint or petition itself, the judge should strike out the action or matter (*b*). Where, however, an estate exceeding £500 in value has been administered and finally wound up in the county court, the High Court will not make an order directing the matter to be reopened and the action transferred to the Chancery Division (*c*).

Order and procedure thereon.

The order of transfer may be made forthwith if the judge is so requested, and if not so requested must not be made before fifteen days at least, and the registrar must make and file a copy of the order and transmit the same by post or otherwise to the proper officer of the Chancery Division, and also send notice by post or otherwise of the fact to all parties or persons entitled to be served therewith (*d*). The registrar must also transmit all necessary documents and certified copies of the record to the proper officer of the High Court, the costs of transmission being paid in the first instance by the party applying for the transfer or, where no application has been made, by the plaintiff, and may require a deposit in respect of such costs without prejudice to any final order as to costs to be made in the action (*e*).

Transfer of accounts and inquiries.

959. If during the progress of taking any accounts, or making any inquiries, it appears to the registrar that the subject-matter of

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (8); and see, generally, title MISREPRESENTATION AND FRAUD.

(*s*) *Stephenson* v. *Garnett*, [1898] 1 Q. B. 677, C. A.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 68.

(*a*) *Hares* v. *Lea* (1870), L. R. 10 Eq. 683. Where the plaintiff after an order of transfer under these provisions obtained an order for the general costs of the action he was ordered to pay the costs of the hearing in the county court (*Ward* v. *Wyld* (1877), 5 Ch. D. 779).

(*b*) *Birks* v. *Silverwood* (1872), L. R. 14 Eq. 101; *Thomson* v. *Flinn* (1874), L. R. 17 Eq. 415.

(*c*) *Prangnell* v. *Prangnell* (1893), 62 L. J. (Q. B.) 346.

(*d*) County Court Rules, Ord. 33, r. 5. For form of order, see County Court Rules, Appendix, Form 331.

(*e*) County Court Rules, Ord. 33, r. 7.

the action exceeds the limit of the court's jurisdiction, he may, if he thinks fit, proceed with and complete the particular account or inquiry, but must at the next sitting of the court present a certificate of the state of proceedings in the action, and the judge must make an order of transfer if he is satisfied that such excess exists (*f*).

Application for action to be tried in county court.

960. Notwithstanding that the amount involved in an equitable action exceeds the limit of the county court jurisdiction, any party may apply to a judge of the Chancery Division in chambers for an order authorising and directing the action or matter to be carried on and prosecuted in the county court, and such judge may summon the other parties or any of them to appear before him, or in default of the appearance of all or any of them has full power to make the order (*g*). It appears that after an order by a county court judge transferring an action to the High Court a judge of the latter court has power under those provisions to retransfer the action to the county court (*h*).

SECT. 5.—*Bills of Exchange Act*, 1855.

Jurisdiction under Bills of Exchange Act, 1855.

961. The Bills of Exchange Act, 1855 (*i*), although repealed as regards the High Court (*k*), is still in force in the county courts by virtue of Orders in Council (*l*). Under the provisions of this Act a plaintiff who has a cause of action on a bill of exchange or promissory note may within six months after the same has become due and payable, after service of a summons in special form and an affidavit of personal service, sign final judgment for the amount indorsed on the summons, together with interest, expenses in connection with non-payment, and costs (*m*), unless the defendant shows by affidavit a defence on the merits and obtains leave to appear (*n*). The county court jurisdiction under this Act is limited to claims not exceeding £50 (*o*), and therefore claims on a bill of exchange exceeding that amount where otherwise they are within the county court jurisdiction must be proceeded with under the ordinary

(*f*) County Court Rules, Ord. 33, r. 6.

(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 68. In *Cowney* v. *Thompson* (1890), 89 L. T. Jo. 222, such an order was made by KEKEWICH, J., notwithstanding the excess in value of the property.

(*h*) *Shields, Whitley and District Amalgamated Model Building Society* v. *Richards* (1901), 84 L. T. 587, *per* COZENS-HARDY, J.

(*i*) 18 & 19 Vict. c. 67.

(*k*) By Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), ss. 3, 7.

(*l*) These orders are dated January 30, 1856, and July 27, 1863.

(*m*) Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), ss. 1, 5. Where the plaintiff has a right to a summons under this Act, an order lies to compel a registrar who refuses to issue the same (*R.* v. *Southampton County Court (Registrar)* (1892), 61 L. J. (Q. B.) 706). A note payable on demand is within these provisions, the six months running from the date thereof (*Maltby* v. *Murrells* (1860), 5 H. & N. 813). As to summons and service, see p. 479, *post*. As to judgment which follows the form of a judgment on a default summons, see p. 538, *post*.

(*n*) Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 2.

(*o*) By Order in Council dated January 30, 1856.

SECT. 5. Bills of Exchange Act, 1855.

procedure of the court. The provisions of the Act do not apply in cases where less than £10 is claimed (*p*). In any case a resort to the provisions of the Act is not necessary (*q*).

Deposit of bill and security.

962. The court or judge may order the bill to be deposited with an officer of the court and order the plaintiff to give security for costs (*r*); and after judgment the judge only may in special circumstances, and on the defendant's application, set aside the judgment, stay or set aside execution, and give the defendant leave to appear and defend the action on such terms as may be reasonable and just (*s*). Until the judge can hear the application execution is stayed by the registrar upon the defendant giving security to abide the decision of the judge (*t*).

Part III.—Procedure before Trial.

SECT. 1.—*Commencement of Action.*

SUB-SECT. 1.—*District for commencement of Ordinary Actions.*

Where action may be commenced.

963. Except in cases otherwise provided for under the County Courts Act, 1888 (*a*), the venue for every action or matter is the court within the district of which the defendant or one of the defendants dwells or carries on business at the time of commencing the action or matter, or it may by leave of the judge or registrar be commenced in the court within the district of which the defendant or one of the defendants dwelt or carried on business, at any time within six calendar months next before the time of commencement, or with the like leave in the court in the district of which the cause of action or claim wholly or in part arose (*b*).

Parties in districts of metropolitan courts.

964. Where a plaintiff dwells or carries on business in the district of one of the metropolitan county courts (*c*) and the defendant dwells in a similar district, the venue is either the court

(*p*) Order in Council dated July 27, 1863.

(*q*) See Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 1, by which "it shall be lawful for the plaintiff . . . at once to sign final judgment."

(*r*) *Ibid.*, s. 4.

(*s*) *Ibid.*, s. 3; County Court Rules, Ord. 35, r. 4.

(*t*) County Court Rules, Ord. 35, r. 4.

(*a*) As to commencement of actions by or against a judge, see p. 415, *ante*, and by or against officers, p. 424, *ante*. As to commencement of equity actions or matters, see p. 452, *post*. As to actions for the recovery of possession of tenements, see p. 436, *ante*, and p. 469, *post*. Special provisions are made in actions under the various statutory jurisdictions conferred on the county court (see pp. 622 *et seq.*, *post*). As to the commencement of admiralty actions, see title ADMIRALTY, Vol. I., p. 129.

(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74. As to how the leave is obtained, see p. 462, *post*. County Court Rules, Ord. 5, r. 13 (10), restricts the granting of leave where the proposed defendant is a person in a humble position in life.

(*c*) For a list of the metropolitan county courts, see note (*i*), p. 411, *ante*.

of the district in which the plaintiff dwells or carries on business or the court of the district in which the defendant does likewise (*d*). This provision is applicable where the plaintiff becomes a resident in a metropolitan district for the express purpose of obtaining the advantage thereof (*e*), and in the case of the City of London Court where the defendant only has "employment" within the City (*f*), and an action may be commenced in that court without leave of the judge or registrar, where the cause of action wholly or in part arose in the City (*g*).

Meaning of "dwell."

965. The word "dwell" refers to a place of permanent and not merely temporary abode, although one individual may have more than one dwelling at the same time for the purpose of being sued (*h*). A mere place of temporary and compulsory detention, such as a gaol (*i*) or temporary lodgings at a place occupied by a person who has a permanent residence elsewhere, is not sufficient (*k*). A person, however, may "dwell" at a lodging where he resides permanently (*l*), or, where he has no permanent residence at all, may be taken to "dwell" at the place where he is temporarily residing (*m*).

Meaning of "carry on business."

The words "carry on business" also refer to something of a permanent character. An individual who is personally attending to the business may carry it on in one district even though his office or place of business is outside the district (*n*), although in the case of a corporation this would seem not to be so (*o*). A person who carries on business within the district of a court by means of an agent does not reside or carry on business within that district if he himself carries on business in a different place (*p*), but a firm may carry on business at a branch establishment for the purposes of an action though the principal place of business is elsewhere (*q*). A temporary carrying on of business in a district by a person whose permanent place of business is elsewhere does not make the former locality his place of business for the purpose of being sued (*r*). The term "carry on business" implies something more than mere service, from which

(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 84.
(*e*) *Massey* v. *Burton* (1857), 2 H. & N. 597.
(*f*) *Kutner* v. *Phillips*, [1891] 2 Q. B. 267, where it was held that such a jurisdiction arose under the London (City) Small Debts Extension Act, 1852 (15 & 16 Vict. c. lxxii.), s. 39.
(*g*) *Felton* v. *Bower & Co.*, [1900] 1 Q. B. 598.
(*h*) *Bailey* v. *Bryant* (1858), 1 E. & E. 340; *Butler* v. *Ablewhite* (1859), 6 C. B. (N. S.) 740.
(*i*) *Dunston* v. *Paterson* (1858), 5 C. B. (N. S.) 267.
(*k*) *Macdougall* v. *Paterson* (1851), 11 C. B. 755; *Marsh* v. *Conquest* (1864), 17 C. B. (N. S.) 432.
(*l*) *Massey* v. *Burton*, *supra*.
(*m*) *Alexander* v. *Jones* (1866), L. R. 1 Exch. 133.
(*n*) *Mitchell* v. *Hender* (1854), 23 L. J. (Q. B.) 273.
(*o*) See p. 450, *post*.
(*p*) *Sheils* v. *Rait* (1849), 7 C. B. 116; see also *Corbett* v. *General Steam Navigation Co.* (1859), 4 H. & N. 482.
(*q*) *Weatherley* v. *Calder & Co.* (1889), 61 L. T. 508.
(*r*) *Shiels* v. *Great Northern Rail. Co.* (1861), 30 L. J. (Q. B.) 331 (contractor erecting workshops for men near work on which he is engaged); *Gorslett* v. *Harris* (1857), 29 L. T. (O. S.) 75.

SECT. 1. Commencement of Action.

the person may be discharged at a moment's notice (*s*). Employment as a clerk at a bank would seem to be sufficient (*t*), although a clerk employed by a solicitor whose office is in the City of London does not "carry on business within the City" under the Mayor's Court of London Procedure Act, 1857 (*a*).

Corporations.

966. A corporation dwells and carries on business at the place where its principal business is conducted (*b*). Thus a railway company dwells and carries on business at its head office (*c*), even though it may have a large hotel and station in another district (*d*). The head office of a trading company is not necessarily the office registered under the Companies (Consolidation) Act, 1908, but the place where the substantial business of the company is carried on and its negotiations conducted (*e*).

Leave to commence action.

967. As stated above, leave of the judge or registrar is necessary where it is desired to commence an action either in the court of the district where the defendant dwelt or carried on business within six months of the commencement of the action or in the court of the district where the cause of action wholly or in part arose (*f*). The granting of this leave is wholly within the discretion of the judge or registrar (*g*), and the discretion must be exercised in accordance with the circumstances of each case (*h*). Where leave is necessary the obtaining of it is a condition precedent to the jurisdiction (*i*).

Contracts by letter.

968. The question where the cause of action or a material part thereof arose is important in cases of contract, and depends on the circumstances of each case. As a general rule, where an offer is made and accepted through the post, the contract is completed the moment the letter accepting the offer is posted, even though the latter never reaches its destination, and such an

(*s*) *Sangster* v. *Kay* (1850), 5 Exch. 386; *Buckley* v. *Hann* (1850), 5 Exch. 43; *Rolfe* v. *Learmonth* (1849), 14 Q. B. 196.

(*t*) *Re Bowie, Ex parte Breull* (1880), 16 Ch. D. 484, C. A., decided under Bankruptcy Rules, 1870, r. 17, for the purpose of service of a debtor summons.

(*a*) 20 & 21 Vict. c. clvii.; *Graham* v. *Lewis* (1888), 58 L. J. (Q. B.) 117, C. A.

(*b*) *Taylor* v. *Crowland Gas and Coke Co.* (1855), 11 Exch. 1; and see title CORPORATIONS, pp. 311, 395, *ante*.

(*c*) *Brown* v. *London and North Western Rail. Co.* (1863), 32 L. J. (Q. B.) 318; *Shiels* v. *Great Northern Rail. Co.* (1861), 30 L. J. (Q. B.) 331; *Adams* v. *Great Western Rail. Co.* (1861), 6 H. & N. 404; *Palmer* v. *Caledonian Rail. Co.*, [1892] 1 Q. B. 823, C. A.

(*d*) *Le Tailleur* v. *South Eastern Rail. Co.* (1877), 3 C. P. D. 18.

(*e*) *Keynsham Blue Lias Lime Co.* v. *Baker* (1863), 33 L. J. (EX.) 41; see also *Aberystwith Promenade Pier Co.* v. *Cooper* (1865), 35 L. J. (Q. B.) 44, where the pier erected and maintained by the company was at Aberystwith and the registered office was at Westminster, where the company's business was carried on and service should be effected.

(*f*) See County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74; and p. 448, *ante*.

(*g*) *R.* v. *Turner* (*Judge*), [1897] 1 Q. B. 445.

(*h*) County Court Rules, Ord. 5, r. 13. As to the procedure under which leave is obtained, see p. 462, *post*.

(*i*) *Brown* v. *London and North Western Rail. Co.* (1863), 32 L. J. (Q. B.) 318. Where no leave has been obtained the defendant may appear and successfully object to the jurisdiction (*ibid.*).

offer cannot be withdrawn by a subsequent letter arriving after the posting of the acceptance (*k*). It appears from this general principle that in such a case a part of the cause of action arises where the letter is posted and a part where it is delivered, although the mere sending or delivery of a bare offer by post will not give jurisdiction to the district where such sending or delivery takes place without some other fact, such as delivery of goods, to indicate the locality in which the cause of action arose (*l*). An acceptance by telegram of an order sent by telegram gives jurisdiction to the district from which the acceptance was sent (*m*). Where, however, an order for work is sent by post, and without formal acceptance the work is carried out in the district where the order is received, the whole cause of action arises in the latter district (*n*).

Sale of goods.

969. In the case of the sale of goods, a material part of the cause of action arises both at the place where the order was given (*o*) and also at the place where the goods are delivered to the vendor or his agent (*p*). If delivery is made by a carrier, the agent of the vendor, the cause of action in part arises where the carrier delivers the goods to the consignee (*q*). In an action for the price of goods the default in payment is part of the cause of action, and the action can be commenced in the district in which payment ought to have been made (*r*).

Breach of warranty

970. Where a parol bargain for the sale of a horse is made in one district, and an agreement of warranty is afterwards made in another district, the whole of the contract is completed and the whole cause of action arises in the latter district (*s*).

Debt of several items.

971. Where the items of a claim are so connected as to form one cause of action, the fact that a cause of action in respect of one item arises within the jurisdiction of a certain county court gives to such court jurisdiction over the whole debt (*t*).

Services rendered.

972. In an action to recover an agreed payment for services, if part of the services are to be performed in one place and part in

(*k*) *Byrne* v. *Van Tienhoven* (1880), 5 C. P. D. 344; and see, generally, title CONTRACT, Vol. VII., pp. 352 *et seq.*

(*l*) *Taylor* v. *Nicholls* (1876), 1 C. P. D. 242; *Evans* v. *Nicholson* (1875), 32 L. T. 778. Both these cases were decided on the question of the jurisdiction of the Mayor's Court of London, and the latter case decides that an action on an account stated may be commenced in the district in which such account was received, even though the immediate cause of action arose elsewhere.

(*m*) *Cowan* v. *O'Connor* (1888), 20 Q. B. D. 640.

(*n*) *Newcombe* v. *de Roos* (1859), 2 E. & E. 271; *Rennie* v. *Ratcliff* (1877), 35 L. T. 833.

(*o*) *Green* v. *Beach* (1873), 42 L. J. (EX.) 151; *Borthwick* v. *Walton* (1855), 15 C. B. 501; *Gold* v. *Turner* (1874), L. R. 10 C. P. 149; *Norman* v. *Marchant* (1852), 7 Exch. 723.

(*p*) *Kemp* v. *Clark* (1848), 12 Q. B. 647; see also *Jackson* v. *Beaumont* (1855), 24 L. J. (EX.) 301.

(*q*) *Arndt* v. *Porter* (1860), 30 L. J. (EX.) 19.

(*r*) *Northey Stone Co.* v. *Gidney*, [1894] 1 Q. B. 99, C. A.

(*s*) *Aris* v. *Orchard* (1860), 30 L. J. (EX.) 21.

(*t*) *Wood* v. *Perry* (1849), 3 Exch. 442; *Bonsey* v. *Wordsworth* (1856), 18 C. B. 325; *Copeman* v. *Hart* (1863), 14 C. B. (N. S.) 731.

SECT. 1. Commencement of Action.

another, a material part of the cause of action arises in the place where the contract is completed (*a*). Similarly in an action to recover a reward offered for the apprehension and prosecution of certain persons, and payable on conviction, a material part of the cause of action arises in the place where the conviction is obtained (*b*).

Bills of exchange.

973. In an action on a bill of exchange against the acceptor, a material part of the cause of action arises in the place where the acceptance took place (*c*) or where the bill was drawn (*d*). In an action by an indorsee against the drawer, a material part of the cause of action arises in the place where the bill was indorsed and delivered (*e*) or where notice of dishonour was given (*f*).

Cause of action assigned.

If there has been an assignment of a cause of action, a material part of such cause of action arises at the place where the assignment was made (*g*).

SUB-SECT. 2.—*District for Commencement of Equity Actions.*

Mortgages etc.

974. Proceedings relating to the recovery or sale of any mortgage, charge, or lien on lands, tenements, or hereditaments, or to partition, must be taken in that court within the districts of which the lands, tenements, or hereditaments, or any part thereof, are situate (*h*).

Trustee Acts.

Proceedings under the Trustee Acts, 1850 and 1852 (*i*), must be taken in the court within the district of which the persons making the application, or any of them, reside or resides (*k*).

Administration.

Proceedings for the administration of the assets of a deceased person must be taken in the court within the district of which the deceased person had his last place of abode in England, or in which the executors or administrators, or any one of them, have their or his place of abode (*l*). If the plaintiff or the defendant in such proceedings carries on business within the district of a metropolitan county court (*m*), the judge of that court has jurisdiction notwithstanding that neither the deceased man nor his executor had or has his place of abode within that district (*n*).

Partnership.

Proceedings in any partnership case must be taken in the court

(*a*) *Barnes* v. *Marshall* (1852), 18 Q. B. 785.
(*b*) *Hernaman* v. *Smith* (1855), 10 Exch. 659.
(*c*) *Roff* v. *Miller* (1850), 19 L. J. (C. P.) 278.
(*d*) *Trevor* v. *Wilkinson* (1875), 31 L. T. 731.
(*e*) *Buckley* v. *Hann* (1850), 5 Exch. 43.
(*f*) *Huth* v. *Long* (1850), 19 L. J. (Q. B.) 325.
(*g*) *Read* v. *Brown* (1888), 58 L. J. (Q. B.) 120, C. A.
(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75 (1). In an action by a solicitor against a mortgagor for costs of preparing the deed, the agreement to give the mortgage is a material part of the cause of action (*Jackson* v. *Grimley* (1864), 16 C. B. (N. S.) 380.
(*i*) 13 & 14 Vict. c. 60, and 15 & 16 Vict. c. 55.
(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75 (2).
(*l*) *Ibid.*, s. 75 (3). In an action against an administrator the grant of letters of administration is a material part of the cause of action (*Re Fuller* (1853), 2 E. & B. 573).
(*m*) See p. 448, *ante*.
(*n*) *R.* v. *Bloomsbury County Court Judge* (1890), 24 Q. B. D. 309.

within the district of which the partnership business was or is carried on (*o*).

It seems that in the absence of any special provision, other equity proceedings, over which the county court has jurisdiction (*p*), must be commenced in accordance within the principles relating to ordinary actions (*q*).

Transfer to another county court.

975. The court has jurisdiction in the case of the four above-mentioned kinds of equitable proceedings to order the transfer of the same to another county court during the progress of the proceedings upon due proof that such other court is more convenient for the hearing of the proceedings in question (*r*).

SUB-SECT. 3.—*Parties.*

Meaning of "party."

976. The term "party" is defined by the County Courts Act, 1888, to include every person served with notice of, or attending, any proceeding, although not named as a party in such proceeding (*s*).

Plaintiffs.

977. All persons may be joined as plaintiffs in one action in whom any right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise. If upon the application of any defendant it appears that such joinder may embarrass or delay the trial, the judge may order separate trials, or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment, but the defendant, though unsuccessful, is entitled to any extra costs occasioned by so joining any person who is not found entitled to relief, unless the court, in disposing of the costs of the action, otherwise directs (*t*).

Joinder of parties.

978. The plaintiff may at his option join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes (*a*). Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75 (4).

(*p*) See p. 445, *ante*. Those not specially provided for include actions for specific performance, execution of trusts, fraud and mistake, the maintenance and guardianship of infants. Where the action arises in one of the metropolitan county court districts the special provisions as to ordinary actions commenced in these districts (see p. 448, *ante*) apply to the above-named proceedings.

(*q*) See pp. 448 *et seq.*, *ante*.

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75.

(*s*) *Ibid.*, s. 186.

(*t*) County Court Rules, Ord. 3, r. 1. The provisions of the county court rules as to parties are practically the same as those in the High Court. For the principles and authorities governing these provisions, see title PRACTICE AND PROCEDURE. As to the effect of the misjoinder of a plaintiff upon a set-off or counterclaim, see p. 491, *post*.

(*a*) County Court Rules, Ord. 3, r. 4.

SECT. 1. Commencement of Action.

more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties (*b*).

Defendants.

All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment (*c*). Where a demand is recoverable against two or more persons jointly answerable, it is sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the court, and where judgment has been obtained against such person and he has satisfied such judgment, he is entitled to contribution from any other person jointly liable with him (*d*). It is not necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest (*e*).

Party in representative capacity.

979. Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorised by the court, before or at the trial to defend in such action or matter, on behalf of or for the benefit of all parties so interested (*f*). When a defendant desires to defend an action under the above-named provision, he must within two clear days of the service of the summons on him give notice to the plaintiff of his intention to apply to the court for leave to do so, and must file an affidavit setting out the facts on which he relies to obtain leave and the names, addresses, and occupations of the proposed parties, and the court may thereupon give him leave to defend, adding the names of such persons to the plaint and minute-book. Notice of the order must be sent to the plaintiff and each of the persons interested, but the plaintiff or any of the persons may object at the trial to the order, and the judge, if he thinks fit, may strike out all or any of the names and order the defendant to pay such costs as he may think fit (*g*).

Executors and administrators.

980. An executor or administrator may sue or be sued in the county court in like manner as if he were a party in his own right, and judgment and execution must follow the rules of the High Court in a like case (*h*).

(*b*) County Court Rules, Ord. 3, r. 5.
(*c*) *Ibid.*, r. 2.
(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 97.
(*e*) County Court Rules, Ord. 3, r. 3.
(*f*) *Ibid.*, r. 7.
(*g*) *Ibid.*, r. 8. For forms of notices etc., see County Court Rules, Appendix, Forms 96—98.
(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 95.

Trustees etc. in representative capacity.

981. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and must be considered as representing such persons, but the court may at any stage of the proceedings order any of such persons to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto. This provision applies when proceedings are taken to enforce a security by foreclosure or otherwise (*i*).

Compromise in trust actions.

Where in proceedings concerning a trust a compromise is proposed, and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the court and assenting to the compromise, the judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons. Such persons are bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts (*k*).

Infants

982. Infants may sue as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose (*l*).

In actions for wages, piecework, or work as a servant where the claim does not exceed £100, an infant can sue in the same manner as if he were of full age (*m*), and the provisions as to guardians in ordinary cases do not affect this right (*n*).

Married women.

983. Married women may sue and be sued as provided by the Married Women's Property Act, 1882 (*o*).

Lunatics.

984. In cases in which before the 1st day of November, 1875, lunatics or persons of unsound mind not so found by inquisition might respectively have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiffs in any action by their committees or next friends according to the practice of the Chancery Division of the High Court, and may in like manner defend any action by their committees or guardians appointed for that purpose (*p*).

Guardians and committees of infants and lunatics.

985. In any action or matter to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode

(*i*) County Court Rules, Ord. 3, r. 6.
(*k*) *Ibid.*, r. 9.
(*l*) *Ibid.*, r. 10.
(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 96; and see title INFANTS AND CHILDREN.
(*n*) County Court Rules, Ord. 3, r. 10.
(*o*) 45 & 46 Vict. c. 75; County Court Rules, Ord. 3, r. 11; and see titles HUSBAND AND WIFE; PRACTICE AND PROCEDURE.
(*p*) County Court Rules, Ord. 3, r. 12; and see titles LUNATICS AND PERSONS OF UNSOUND MIND; PRACTICE AND PROCEDURE.

SECT. 1. Commencement of Action.

of taking evidence or as to any other procedure given by the next friend, guardian, committee, or other person acting on behalf of the person under disability shall, with the consent of the court, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in lunacy (*q*).

Partners.

986. Any two or more persons claiming or being liable as co-partners, and carrying on business within England and Wales, may sue or be sued in the names of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and in any such case, on application by any party to the action, the court may order a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm to be furnished in such manner, and verified on oath or otherwise, as the court may direct (*r*).

Names and residences of partners.

Where an action is brought by partners in the name of their firm, the plaintiffs must, on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the registrar the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. If the plaintiffs fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the judge may direct, or the judge at the trial may adjourn the hearing on such terms as he may think fit; and when the names of the partners are so declared, the action must proceed in the same manner and the same consequences in all respects follow as if they had been named as the plaintiffs in the summons, but all the proceedings must, nevertheless, continue in the name of the firm (*s*).

Actions by firm against members thereof.

These provisions as to actions by or against firms apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within England or Wales; but no execution may be issued in any such action without leave of the judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just (*t*).

Person carrying on business in name other than his own.

987. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case permits, all these provisions are to apply to such a case (*u*).

(*q*) County Court Rules, Ord. 3, r. 13.
(*r*) *Ibid.*, r. 14; and see titles PARTNERSHIP; PRACTICE AND PROCEDURE. As to service on partners, see p. 470, *post*.
(*s*) County Court Rules, Ord. 3, r. 15.
(*t*) *Ibid.*, r. 16.
(*u*) *Ibid.*, r. 17

SECT. 1.
Commencement of Action.

Representation of heir-at-law, next of kin or a class when unknown.

988. In any case in which the rights of an heir-at-law or customary heir or next of kin or a class depend upon the construction which the judge may put upon an instrument, and it is not known or is difficult to ascertain who is or are such heir-at-law or customary heir or next of kin or class, and the judge considers that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, customary heir, next of kin or class have been ascertained by means of inquiry or otherwise, the judge may appoint some one or more proper person or persons appearing to him on such evidence as he thinks sufficient to have a presumptive or *primâ facie* claim to be regarded as heir-at-law, customary heir, or one of the next of kin or other class in question, to represent such heir-at-law, customary heir, next of kin or class; and the judgment or order of the judge in the presence of such person or persons is binding upon the heir-at-law, customary heir, next of kin or class so represented (*a*).

Appointment of representative of absent parties.

In any case in which an heir-at-law or customary heir or any next of kin or a class is or are interested in any proceedings, the judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it appears expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more person or persons to represent such heir, or to represent all or any of such next of kin or class; and the judgment or order of the judge in the presence of the person or persons so appointed is binding upon the persons so represented (*b*).

A residuary legatee, or legatee interested in a legacy or a residuary devisee or heir, or one of several *cestuis que trustent* entitled to a judgment for administration or execution of a trust need not serve other legatees or parties equally interested (*c*).

Waste or protection of property.

989. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest (*d*).

Addition of parties by judge.

990. The judge may require any person to be made a party to any action or matter and may give him the conduct of such action, and may in any particular case make an order for placing the defendant on the record on the same footing in regard to costs as other parties having with him a common interest (*e*).

When heir-at-law need not be a party.

991. In any action or matter to execute the trusts of a will the heir-at-law need not be a party (*f*).

Where no legal representative.

992. If in any action or matter it appears to the judge that any deceased person who was interested in the matter in question has no legal personal representative, the judge may proceed in the absence of any person representing the estate of the deceased

(*a*) County Court Rules, Ord. 3, r. 18.
(*b*) *Ibid.*, r. 19.
(*c*) *Ibid.*, rr. 20—23.
(*d*) *Ibid.*, r. 24.
(*e*) *Ibid.*, r. 26.
(*f*) *Ibid.*, r. 32.

SECT. 1. Commencement of Action.

person, or may appoint some proper person to represent his estate for all the purposes of the action or matter, on such notice to such persons, if any, as the judge may think fit, either specially, or generally by public advertisement; and the order so made, and any order consequent thereon, binds the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the action or matter (*g*).

Administration action; claim of person not a party.

993. In any action or matter for the administration of the estate of a deceased person, no party other than the executor or administrator is, unless by leave of the court, entitled to appear either in court or in chambers on the claim of any person not a party to the action or matter against the estate of the deceased person in respect of any debt or liability. The court may direct or give liberty to any other party to the action or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as the court may think fit (*h*).

SUB-SECT. 4.—*Joinder of Causes of Action.*

Joinder without leave.

994. Subject to the exceptions hereinafter stated a plaintiff may unite in the same action several causes of action without leave of the court (*i*); but if at any time it appears to the judge that any causes of action joined cannot conveniently be tried and disposed of together, he may order separate trials, or may exclude any such cause of action on such terms as he may deem just (*k*). Claims by or against a husband and wife may be joined with claims by or against either of them separately (*l*).

Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator (*m*).

Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant (*n*).

What may be joined in ejectment action.

995. No cause of action may, unless by leave of the court, be joined with an action of ejectment, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed or any part thereof, or damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed.

(*g*) County Court Rules, Ord. 3, r. 33.
(*h*) *Ibid.*, r. 34.
(*i*) County Court Rules, Ord. 4, r. 2. The rules as to joinder of causes of action in the county court are practically the same as those in use in the High Court. For the authorities and law on this subject, see title PRACTICE AND PROCEDURE.
(*k*) County Court Rules, Ord. 4, r. 7.
(*l*) *Ibid.*, r. 4.
(*m*) *Ibid.*, r. 5.
(*n*) *Ibid.*, r. 6.

SECT. 1. Commencement of Action.

No provision as to joinder of causes of action prevents any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession is not deemed an action of ejectment within the meaning of these rules. In case any mortgage security is foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may apply to the judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case may require (*o*).

What may be joined in foreclosure action.

996. In actions of replevin no other cause of action may be joined in the summons (*p*).

Replevin actions.

997. Claims by a trustee in bankruptcy as such may not, unless by leave of the court, be joined with any claim by him in any other capacity (*q*).

Claim by trustee in bankruptcy

SUB-SECT. 5.—*Abandonment of Excess.*

998. A plaintiff must not divide any cause of action for the purpose of bringing two or more actions in any county court, but having a cause of action for more than £100, for which a plaint might be entered if not exceeding that amount, he may abandon the excess and may recover an amount not exceeding £100, and any judgment so recovered is in full discharge of all demands in respect of such causes of action and must be entered accordingly (*r*).

No division of cause of action.

999. What is a single cause of action in such a case is a question of fact; in a tradesman's bill in which one item is connected with another, in the sense that the dealing is not intended to terminate with one contract but to be continuous so that one item, if not paid, shall be united with another, the whole bill forms one entire demand and consequently one cause of action (*s*).

What are different causes of action.

A claim for rent in arrear and a claim under the Landlord and Tenant Act, 1730 (*t*), for holding over after notice to quit, since they assume the existence of different relations, constitute distinct causes of action and may be sued for separately (*u*), and this principle

(*o*) County Court Rules, Ord. 4, r. 1. As to actions of ejectment, see p. 435, *ante*.
(*p*) County Court Rules, Ord. 34, r. 1. As to replevin, see title DISTRESS.
(*q*) County Court Rules, Ord. 4, r. 2.
(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 81; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3.
(*s*) *Re Aykroyd, Grimbly* v. *Aykroyd* (1847), 1 Exch. 479; *Wood* v. *Perry* (1849), 3 Exch. 442; *Bonsey* v. *Wordsworth* (1856), 18 C. B. 325; *Kimpton* v. *Willey* (1850), 9 C. B. 719; *Dodd* v. *Wigley* (1849), 7 C. B. 106. On the other hand, a plaintiff who had supplied liquor and lent money to a defendant at different times, and who had marked down separate items, entered them in a book as one account, and had sent an account for the whole to the defendant, was allowed to sue in respect of separate causes of action (*Brunskill* v. *Powell* (1850), 19 L. J. (EX.) 362.
(*t*) 4 Geo. 2, c. 28.
(*u*) *Wickham* v. *Lee* (1848), 12 Q. B. 521.

SECT. 1. Commencement of Action.

similarly applies to damages to goods and injury to the person, although they may be occasioned by one and the same wrongful act (*a*).

Objection to division.

1000. The defendant should object at the trial if the plaintiff divides his cause of action contrary to these provisions, as otherwise in subsequent proceedings to recover the residue he cannot plead them in bar (*b*).

Entry of abandonment on particulars.

1001. The abandonment of the excess must be entered at the end of the particulars annexed to the summons (*c*), must be express (*d*), and must be the act of the plaintiff himself (*e*). A plaintiff cannot abandon an excess so as to deprive the defendant of his right of appeal (*f*).

Where upon taking an account it appears that the plaintiff is entitled to a larger amount than £100, and he has not in his particulars abandoned the excess over such sum, he may by leave of the court do so, and judgment may be entered for £100; if he does not abandon the excess the action will be struck out (*g*).

SECT. 2.—*Summons and Service.*

SUB-SECT. 1.—*Plaint and Summons.*

Proceedings by plaint.

1002. All proceedings authorised to be commenced in the county court by or under the County Courts Act, 1888 (*h*), must, except when otherwise provided by the Act and the County Court Rules, be commenced by the entry of a plaint and be called actions (*i*). On the application of any person desirous to bring an action under the County Courts Act, 1888, the registrar of the court must enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints must be numbered in every year according to the order in which it is entered (*k*).

Procedure on entry of plaint.

1003. Any party desiring to enter a plaint by himself or his solicitor must file at the office of the registrar a præcipe containing (1) the christian name and surname, description, and residence or place of business of the plaintiff, and if the plaintiff is an infant required to sue by a next friend the particulars required in such an action (*l*); (2) the surname, and the residence or place of business

(*a*) *Brunsden* v. *Humphrey* (1884), 14 Q. B. D. 141, C. A.
(*b*) *Vines* v. *Arnold* (1849), 8 C. B. 632; *Adkin* v. *Friend* (1878), 38 L. T. 393.
(*c*) County Court Rules, Ord. 6, r. 1.
(*d*) *Vines* v. *Arnold*, *supra* (entry of plaint for part of demand).
(*e*) *Re Hill*, *Hill* v. *Swift* (1855), 10 Exch. 726, where the judge himself, against the consent of the defendant, amended the claim to an amount within the jurisdiction, and gave judgment for that amount, and a prohibition was granted.
(*f*) *North* v. *Holroyd* (1868), L. R. 3 Exch. 69.
(*g*) County Court Rules, Ord. 14, r. 16.
(*h*) 51 & 52 Vict. c. 43, s. 73.
(*i*) County Court Rules, Ord. 5, r. 1.
(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 73.
(*l*) See p. 479, *post*.

of the defendant, and (where known) his christian name and description, the number of his house, or place of business, and the name of the street in which it is situate; (3) when the defendant's christian name is not known, a statement whether the defendant is a male or a female, and if known whether of full age or not, and, if a female, whether married or single, or a widow; (4) a short statement of the cause of action, or remedy or relief sought, and the amount of the debt or damages claimed. Where the intended plaintiff is illiterate and unable to furnish the required information in writing, such præcipe will be filled up by the registrar's clerk. If the plaint be entered by a solicitor, he must state in such præcipe his name and place of business (*m*).

Plaint note.

At the time of entering the plaint the registrar must give to the plaintiff or his solicitor or agent a note under the seal of the court, according to the prescribed form. In the event of such note being lost or destroyed, a duplicate may be given from time to time to the plaintiff, or his agent, upon proof by affidavit or otherwise, to the satisfaction of the registrar, that the person applying is the plaintiff or his agent, and that he is entitled to the money (if any) paid into court to his credit (*n*).

Security where plaintiff out of jurisdiction.

1004. Where it appears on an application for the entry of a plaint that the plaintiff does not reside in England or Wales, the summons will not be issued until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the registrar. But where the plaint is entered through a solicitor, an undertaking by him to be responsible for the costs is sufficient (*o*). Security may also be required when the plaintiff only temporarily resides in England or Wales if he ordinarily resides out of England or Wales (*p*).

Company.

1005. Where a company registered under the Companies (Consolidation) Act, 1908, is a defendant, the præcipe must give an address for service, described as "being the registered office of the company" (*q*).

Parties in representative capacity.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity it must be stated in the præcipe and particulars in what capacity the plaintiff sues or the defendant is sued (*r*).

Assignee of debt.

Where an assignee of a debt or other legal chose in action sues, the fact that he is such assignee, and the name, address, and

(*m*) County Court Rules, Ord. 5, r. 4. For forms of præcipe, see County Court Rules, Appendix, Forms 6, 7. As to the procedure when leave is necessary to enter a plaint, see p. 462, *post*. The court fee on every plaint and petition is one shilling in the pound (County Court Fees Order, December 30, 1903, Sched. A, r. 1).

(*n*) County Court Rules, Ord. 7, r. 1. For forms of plaint note, see County Court Rules, Appendix, Forms 19—21.

(*o*) County Court Rules, Ord. 5, r. 10. For forms of security and undertaking by a solicitor, see County Court Rules, Appendix, Forms 16, 17.

(*p*) County Court Rules, Ord. 5, r. 11; and see *Michiels* v. *Empire Palace Co.*, [1892] W. N. 38.

(*q*) County Court Rules, Ord. 5, r. 5.

(*r*) *Ibid.*, r. 6.

SECT. 2. Summons and Service.

description of the assignor, must be stated in the præcipe and summons, and in the particulars (if any) (*s*).

Jurisdiction by consent.

1006. Where the parties give the county court jurisdiction by agreement (*t*), a plaint must be entered and a summons issued thereon as in other cases, and all the rules and practice of the court apply as far as they are applicable. In such a case the memorandum of consent must be filed with the registrar (*a*).

Actions relating to land.

1007. Actions brought for the recovery of possession of tenements and actions of ejectment must be so distinguished (*b*).

Entry of plaint in another district.

1008. Where a person desires to enter a plaint in a court within the district of which he does not reside, he may, instead of attending at the court, transmit free of cost to the registrar (1) a præcipe containing the information necessary in an ordinary case (*c*), and where particulars are required (*d*) as many copies of the particulars as there are defendants and an additional copy to file, and (2) a post office order to cover the necessary fees and a prepaid envelope addressed to himself. On the receipt of the above the registrar must enter the plaint and forward the plaint note to the plaintiff (*e*).

Where leave necessary to enter plaint.

1009. Where leave is necessary to enter a plaint (*f*), an application must be made upon the affidavit of the proposed plaintiff, or of some person on his behalf who has knowledge of the facts, setting forth the facts on which the application is grounded, according to such one of the prescribed forms as is applicable to the case (*g*).

Evidence thereon.

The affidavit must be lodged with the registrar, together with a copy of the same for each defendant (*h*).

The judge or registrar must duly consider the facts disclosed by the affidavit, and must exercise his discretion in each case as to the grant or refusal of leave in accordance with the circumstances (*i*).

Where the proposed plaintiff is the assignee of a debt, the judge or registrar must in particular consider whether the proposed place of trial will be less convenient to the defendant than the place at

(*s*) County Court Rules, Ord. 5, r. 7. As to an assignee suing out of the district, see note (*k*), p. 463, *post*.

(*t*) See p. 434, *ante*.

(*a*) County Court Rules, Ord. 5, r. 2; for form of memorandum, see County Court Rules, Appendix, Form 13. If such an action has been commenced in the High Court, it must be recommenced *de novo* in the county court (*Pearce* v. *Winkworth* (1873), 28 L. T. 710).

(*b*) County Court Rules, Ord. 5, r. 3; and see p. 436, *ante*. For forms in such actions, see County Court Rules, Appendix, Form 247—278.

(*c*) See p. 460, *ante*.

(*d*) See p. 466, *post*.

(*e*) County Court Rules, Ord. 5, r. 12. For the purposes of this rule the districts of the metropolitan courts are considered *inter se* as one district only (*ibid.*).

(*f*) See p. 450, *ante*.

(*g*) County Court Rules, Ord. 5, r. 13 (1). For form of affidavit on an ordinary summons, see County Court Rules, Appendix, Form 8 (1); for form of affidavit where an assignee sues, see *ibid.*, Forms 8 (1), (2); for form of affidavit where a default summons is desired, see *ibid.*, Forms 9, 10.

(*h*) County Court Rules, Ord. 5, r. 13 (5).

(*i*) *Ibid.*, r. 13 (6).

which he might have been sued if the debt had not been assigned, and if he is of opinion that it will, he must refuse leave (*k*).

Every order granting leave under this rule must be signed by the judge or registrar in his own handwriting at the foot of the affidavit (*l*). Subject to these provisions, leave may be granted, and the summons may be issued, although the plaintiff cannot give the present place of residence or of business of the defendant; but in that case the defendant must be served personally, wherever in England or Wales he may be met with (*m*). No leave may be granted under these provisions unless the occupation or description of the proposed defendant is fully set out in the affidavit filed for the issue of the summons (*n*).

Order granting leave.

1010. Where the proposed defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, leave must not be granted unless (1) it appears by the affidavit that the proposed defendant was residing in the district when the debt or part thereof was contracted, or the cause of action wholly or in part arose; or (2) it appears by the affidavit that the proposed defendant or some person on his behalf was personally present in the district when the debt or part thereof was contracted, or that the proposed defendant or some person for whose acts or defaults he is alleged to be responsible was personally present in the district when the cause of action wholly or in part arose; or (3) the judge or registrar is satisfied that the proposed place of trial will not be less convenient to the proposed defendant than the court in which he could be sued without leave; or (4) it appears by the affidavit that the proposed plaintiff has reason to believe that the proposed defendant admits the claim, and that the proposed plaintiff has not more than twenty and not less than ten clear days before the filing of the affidavit given or caused to be given to the proposed defendant notice in writing of his intention to apply for leave, and has by such notice required the proposed defendant to state whether he disputes the claim, and that the proposed defendant has either admitted the claim or failed to give notice that he disputes it (*o*).

Where proposed defendant is labourer etc.

1011. Where an infant desires to commence an action (other than for wages or piece-work, or for work as a servant (*p*)), or is a claimant in an interpleader proceeding, he must procure the attendance of a next friend, at the office of the registrar, at the time of entering the plaint or delivering the particulars of the goods and chattels alleged to be his property. The plaint will not be

Infant and next friend.

(*k*) County Court Rules, Ord. 5, r. 13 (7).
(*l*) *Ibid.*, r. 13 (8).
(*m*) *Ibid.*, r. 13 (9).
(*n*) *Ibid.*, r. 13 (12).
(*o*) *Ibid.*, r. 13 (10). For forms of affidavit in such cases, see County Court Rules, Appendix, Forms 8B, 10B. Where the facts alleged in paragraph (4) above exist, a paragraph according to the Forms 8C, 10C must be added (County Court Rules, Ord. 5, r. 13 (11)).
(*p*) See p. 455, *ante*

SECT. 2. **Summons and Service.**

entered or the particulars received until the next friend has undertaken to be responsible for costs, and on entering into such undertaking the next friend is liable in the same manner and to the same extent as if he were himself the plaintiff; and the action or interpleader proceeding proceeds in the name of the infant by such next friend, and the undertaking must be filed by the registrar; but no order of the court is necessary for the appointment of such next friend. If the infant fails in or discontinues his action or proceeding, and does not pay the amount of costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from the next friend as for the recovery of a judgment debt (*q*). This provision also applies to a person of unsound mind not so found by inquisition when making a claim upon an interpleader proceeding (*r*).

Married women.

1012. Where a plaint is entered by a married woman in which her husband is not joined, she must state the name, and, so far as she can, the address and description of her husband (*s*).

Public authorities protection.

1013. In respect to notice of action, the Public Authorities Protection Act, 1893 (*t*), applies to actions commenced in the county court.

Ordinary summons.

1014. As soon as the plaint is issued the summons, bearing the seal of the court, is issued to the defendant to appear and answer it. The summons must be in the prescribed form, stating the substance of the action and bearing the number of the plaint on the margin thereof, and no misnomer or inaccurate description of any person or place in any plaint or summons is to vitiate the same as long as the person or place is therein described so as to be commonly known (*a*). Where leave is required to serve a summons out of the district (*b*) the copy affidavit used in obtaining such leave must be annexed to and served with the summons (*c*), and the like provision applies in all cases where particulars have to be filed (*d*). An ordinary summons may be made returnable either at the court for which plaints are then being entered or at the request of the plaintiff at any subsequent court (*e*).

(*q*) County Court Rules, Ord. 5, r. 16. For form of undertaking by the next friend, see County Court Rules, Appendix, Form 15.

(*r*) *Ibid.*, r. 18.

(*s*) *Ibid.*, r. 17.

(*t*) 56 & 57 Vict. c. 61, s. 1; and see, generally, title PUBLIC AUTHORITIES AND PUBLIC OFFICERS. For the special protection of county court officers with regard to actions against them, see p. 426, *ante*.

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 73; County Court Rules, Ord. 7, r. 2. For form of ordinary summons, see County Court Rules, Appendix, Form 22. For default summonses, see p. 465, *post*. Actions to recover possession of tenements after notice to quit or for non-payment of rent are commenced by plaint and summons in the ordinary way; see p. 436, *ante*. For service of such summonses, see p. 469, *post*.

(*b*) See p. 450, *ante*.

(*c*) County Court Rules, Ord. 7, r. 3.

(*d*) *Ibid.*, r. 4; as to particulars generally, see p. 466, *post*.

(*e*) *Ibid.*, r. 5.

1015. Subject to the rules as to service, where an ordinary summons has not been served, successive summonses may be issued without entering a new plaint (*f*).

Successive summons.

A successive summons may not be issued in any case in which the non-service has been caused by the fact of the plaintiff having mis-stated the name of the defendant or having given a wrong or insufficient address, or of the defendant having, before the entry of the plaint, removed from the address given on the entry thereof, unless the plaintiff satisfies the court that the mis-statement or wrong or insufficient address was made or given in good faith, and without any want of reasonable care on his part, or that he could not by the exercise of reasonable care have discovered the fact of such removal before the entry of the plaint (*g*).

Successive summonses must bear the same date and number as the summons first issued, which date and number must be written in red ink in the plaint book, and such summonses are a continuance of the first summons (*h*).

No successive summons may be issued on a plaint after three months from the date of entry (*i*).

Where an ordinary summons, whether issued for service in or out of the district, has not been served by reason of the defendant having after the entry of the plaint removed out of the district in which such summons was required to be served, a successive summons may be issued under the above-named provisions for service on such defendant in any other district to which he has removed (*k*).

Default summons.

1016. Subject to any rules and orders under the County Courts Act, in any action for a debt or liquidated money demand, the plaintiff may, at his option, cause to be issued a summons in the ordinary form, or (upon filing an affidavit to the effect set forth in the prescribed form) a default summons in the prescribed form or to the prescribed effect. Where a default summons is issued it must be personally served on the defendant, and if the defendant does not, within eight days after service of the summons, inclusive of the day of service, give notice, by post or otherwise, in writing, signed by himself or his solicitor, to the registrar of the court from which the summons issued, of his intention to defend, the plaintiff may, after eight days and within two months from the day of service, upon proof of service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the registrar (*l*).

When default summons not issued.

No other summons than a summons in the ordinary form may, without leave of the judge or registrar, be issued where the amount claimed

(*f*) County Court Rules, Ord. 7, r. 6 (1); as to service, see pp. 468 *et seq.*
(*g*) *Ibid.*, r. 6 (2).
(*h*) *Ibid.*, r. 6 (4).
(*i*) *Ibid.*, r. 6 (5).
(*k*) *Ibid.*, r. 7.
(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 86 (1). For forms of default summons, see County Court Rules, Appendix, Form 23. For forms of affidavit thereon, see *ibid.*, Forms 9—12.

SECT. 2. Summons and Service.

does not exceed £5, unless the action is for the price, value, or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade, profession, or calling, and such leave must be given in the manner prescribed (*m*). In such a case no leave may be given unless the occupation and description of the defendant is fully set out in the affidavit filed for the issue of such summons; and no such leave may be given in cases where in the affidavit it appears that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour (*n*).

Service otherwise than by bailiff.

1017. Where the issue of a default summons is desired, and the plaintiff wishes the same to be served otherwise than by a bailiff, he must so request in the præcipe filed before entry of the plaint (*o*).

Request for judgment by instalments.

Where a plaintiff requiring a default summons does not desire the order upon the judgment to be for payment forthwith, he may at the time of the entry of the plaint file a notice of the time or times, and of the instalments, if any, at or by which he consents to accept payment, together with as many copies of such notice as there are defendants; and a copy of such notice must be annexed to the summons and served therewith; and if he neglects to file such notice he may nevertheless give notice to the registrar to the like effect at the time of entering up judgment (*p*).

Assignee of debt.

An assignee of a debt or other legal chose in action is not entitled to issue a default summons (*q*).

SUB-SECT. 2.—*Particulars and Statement of Claim.*

Filing of particulars.

1018. In an action in which the amount claimed exceeds forty shillings, the plaintiff must at the time of the entry of the plaint in every action file particulars of his claim or demand, in which he must specify the cause of action in respect of which the action is brought, as well as the pecuniary or other claim which he seeks to establish (*r*). A sealed copy of the particulars must be annexed to the summons by the registrar (*s*).

Particulars where account claimed.

1019. Where the plaintiff in the first instance desires to have an account taken, the particulars must contain a claim that such account be taken, and must state the amount which the plaintiff claims subject to such account; and if the amount exceeds £100, and the plaintiff desires to abandon the excess, the abandonment of the excess must be entered at the end of the particulars. If no amount is stated in the particulars, the plaintiff is deemed to claim £100 (*t*).

(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 86 (6).
(*n*) County Court Rules, Ord. 5, r. 15.
(*o*) *Ibid.*, r. 9.
(*p*) *Ibid.*, r. 19. For form of notice, see County Court Rules, Appendix, Form 24.
(*q*) County Court Rules, Ord. 5, r. 8.
(*r*) County Court Rules, Ord. 6, r. 1. As to abandonment of excess, see p. 459, *ante*. As to particulars generally, see title PLEADING.
(*s*) County Court Rules, Ord. 2, r. 8.
(*t*) County Court Rules, Ord. 6, r. 2; and see the preceding note.

1020. In actions of ejectment the particulars must contain a full description of the property sought to be recovered and of the annual value thereof, and of the rent, if there be any, fixed or paid in respect thereof (*u*).

Actions of title.

1021. Where an action is brought in which the title to a corporeal or incorporeal hereditament is in question (*a*), whatever the amount of the damages claimed may be, the plaintiff must, at the time of the entry of the plaint, file a concise statement in writing of his cause of action and of the particulars thereof (*b*).

Administration action.

1022. Where any person entitled to bring or maintain an action for the administration of the estate of any deceased person or the execution of any trust desires to submit for the determination of the court any of the following questions or matters—(1) Any question affecting the rights or interests of any person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust:* (2) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others: (3) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts: (4) The payment into court of any money in the hands of the executors or administrators or trustees: (5) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees: (6) The approval of any sale, purchase, compromise, or other transaction: (7) The determination of any question arising in the administration of the estate or trust: he must in his particulars specify concisely the question or matter upon which the decision of the court is required, and that he is willing to renounce his right to an order for a general administration of the estate or trust (*c*).

Separate causes of action.

1023. Where the plaintiff seeks to obtain payment or satisfaction, or relief, redress, or remedy upon more than one cause of action or claim, he must in his particulars state the grounds of each claim separately, and must also state separately the payment or satisfaction, relief, redress, or remedy he claims in respect of each (*d*).

Further particulars.

1024. In any action the defendant may, at any time not later than five clear days before the return day, give notice to the plaintiff that he requires further particulars, and the plaintiff must, within two clear days of the service of such notice, file full particulars of his claim, and of the relief or remedy to which he claims to be entitled, and must within the same time deliver to the defendant a copy thereof. If the plaintiff fails to comply with such notice, or complies therewith insufficiently, the court before or at the trial, if satisfied that the defendant is thereby prejudiced in his defence, may order the plaintiff to file and deliver full particulars,

(*u*) County Court Rules, Ord. 6, r. 3. As to actions of ejectment, see p. 435, *ante*.
(*a*) As to such actions, see p. 438, *ante*.
(*b*) County Court Rules, Ord. 6, r. 4.
(*c*) *Ibid.*, r. 5.
(*d*) *Ibid.*, r. 6.

SECT. 2. Summons and Service.

and may adjourn the action, and stay all proceedings therein until the order has been complied with, and may make such order as to costs as the court may think fit (*e*). Where in an action the claim is for an amount between £50 and £100, the notice required for further particulars is fifteen clear days (*f*).

Fraction of a penny.

1025. Where the amount claimed in any case includes a fraction of a penny, such fraction must not be entered in the books of the court, and judgment must not be given for any fraction of a penny (*g*).

Signature of particulars by solicitor.

1026. Where a plaintiff sues by a solicitor, the particulars must be signed by the solicitor in his own name or that of his firm, and he must state thereon his place of business and where he will accept service of proceedings in the action or matter on behalf of the plaintiff, otherwise the costs of entering the plaint by solicitor will not be allowed, provided that the clerk of a solicitor, if duly authorised, may sign the particulars on behalf of and in the name of his master. If in the opinion of the court the particulars are insufficient, the costs of entering the plaint by solicitor must not be allowed unless the court otherwise orders (*h*).

SUB-SECT. 3.—*Service.*

Service by bailiff.

1027. Except in the cases hereinafter set out, a county court summons is served by the bailiff as officer of the court (*i*).

Ordinary summons.

An ordinary summons to appear to a plaint (except in an action of ejectment), where it is to be served in the home district, should, in order to insure its service, be delivered to the bailiff at least fifteen clear days, and where it is to be served in a foreign district eighteen clear days, before the return day, but it must, in either case, be served at least ten days before the return day thereof. But a summons may be issued and served at any time before the return day, on production by the plaintiff to the registrar of an affidavit showing that the defendant is about to remove out of the ordinary jurisdiction of the court or of that of the court in which he then resides; and the service of such summons may be deemed good service, if at the hearing the judge is satisfied, on the evidence on oath before him, that such party was so about to remove, but whether such proof be given or not, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing (*j*).

(*e*) County Court Rules, Ord. 6, r. 7. As to the sufficiency of particulars generally, see title PLEADING.

(*f*) County Court Rules, Ord. 22A, r. 6.

(*g*) County Court Rules, Ord. 6, r. 8.

(*h*) *Ibid.*, r. 9. A lithographed signature is not sufficient (*R.* v. *Cowper* (1890), 24 Q. B. D. 533, C. A.). As to the position of solicitors in county courts generally, see p. 525, *post*.

(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 35, Ord. 2, r. 21.

(*j*) County Court Rules, Ord. 7, r. 9. The terms "home" and "foreign" district mean respectively the district in which proceedings are commenced and an outside district.

Except under special provisions hereinafter set out, service of an ordinary summons must be effected by delivering the same to the defendant personally, or to some person apparently not less than sixteen years old, at the house or place of dwelling, or place of business of the defendant, and, in the case of the place of business, where he is the master or one of the masters thereof (*k*). Mode of service.

1028. The summons in an action of ejectment (*l*) must, in order to insure its service, be delivered to the bailiff forty clear days at least before the return day, and must be served thirty-five clear days before the return day thereof (*m*). Recovery of possession.

A summons for the recovery of a tenement as distinct from ejectment is served like an ordinary summons to appear to plaints, subject to a provision that in the obvious absence of the defendant a copy of the summons may be posted on some conspicuous part of the house, and such posting is deemed good service (*n*). Where a sub-tenant is served with a summons he must, under penalty of forfeiting three years' rack rent of the premises so held as sub-tenant, give notice to his immediate landlord, who may thereupon be added or substituted as defendant (*o*).

1029. If by reason of the absence of any party or from other sufficient cause the service of any summons, petition, proceeding or document cannot be made, the court may on hearing an affidavit showing grounds make an order for substituted or other service (*p*). Substituted service.

1030. Where a solicitor represents to the bailiff that he is authorised to accept service on behalf of a defendant, it is sufficient service to deliver the summons to such solicitor, provided that he must at the time of delivery indorse upon the copy of the summons retained by the bailiff a memorandum that he accepts service thereof on behalf of such defendant (*q*). Solicitor accepting service.

1031. Where an infant is a defendant, service on his father or guardian, or (if none) on the person with whom the infant resides or under whose care he is, is, unless the court otherwise orders, deemed good service on the infant, provided that the court may order that service made or to be made on the infant shall be deemed good service (*r*). Infants.

1032. Where a lunatic or a person of unsound mind not so found by inquisition is a defendant, service on the committee (if any) of Lunatics.

(*k*) County Court Rules, Ord. 7, r. 10.

(*l*) See p. 435, *ante*.

(*m*) County Court Rules, Ord. 7, r. 8. As to service of a successive summons where the defendant has removed out of the district, see p. 465, *ante*.

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 141; and see p. 619, *post*.

(*o*) *Ibid.*, s. 140.

(*p*) County Court Rules, Ord. 7, r. 40. As to forms of affidavit and order, see County Court Rules, Appendix, Forms 43—45. As to the principles governing substituted service, see title PRACTICE AND PROCEDURE.

(*q*) County Court Rules, Ord. 7, r. 12.

(*r*) *Ibid.*, r. 13.

SECT. 2. Summons and Service.

the lunatic, or (if none) on the person with whom the person of unsound mind resides or under whose care he is, is, unless the court otherwise orders, deemed good service on such defendant (*s*).

Partners.

1033. Where persons are sued as partners in the name of their firm, the summons must be served either upon any one or more of the partners, or at the principal place of the partnership business within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there, and, subject to these provisions, such service is deemed good service on the firm so sued, whether any of the members thereof are out of England and Wales or not, and no leave to issue a summons against the members of the firm out of England and Wales is necessary; provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action the summons must be served upon every person within England and Wales sought to be made liable (*a*).

Defendant carrying on business in name other than his own.

1034. Where one person carrying on business in a name or style other than his own name is sued in such name or style as if it were a firm name, the summons may be served either upon such person, or at the principal place of business of such person within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there; and, subject to these provisions, such service is deemed good service on the person so sued (*b*).

Husband and wife.

1035. Where husband and wife are both defendants they must both be served, unless the court otherwise orders (*c*).

Defendant on board ship.

1036. Where a defendant is living or serving on board of any ship or vessel, it is sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of such ship or vessel (*d*).

Soldiers and sailors.

1037. Where a defendant is residing or quartered in any barracks, and serving His Majesty as a soldier or marine, it is sufficient service to deliver the summons at the barracks to the adjutant of the corps, or to any officer or sergeant of the company or troop to which such soldier or marine belongs (*e*).

Prisoner.

1038. Where a defendant is a prisoner in a gaol, it is sufficient service to deliver the summons at the gaol to the governor or any person appearing to be the head officer in charge thereof (*f*).

(*s*) County Court Rules, Ord. 7, r. 14.
(*a*) *Ibid.*, r. 15. As to the general principles of service on partners, see title PRACTICE AND PROCEDURE.
(*b*) County Court Rules, Ord. 7, r. 16.
(*c*) *Ibid.*, r. 17.
(*d*) *Ibid.*, r. 18.
(*e*) *Ibid.*, r. 19.
(*f*) *Ibid.*, r. 20.

1039. Where a defendant is working in any mine or other works underground, it is sufficient service to deliver the summons at the mine or works, to the engine-man, banks-man, or other person apparently in charge of the mine or works (*g*).

Asylum employee.

1040. Where the defendant is employed and dwells in any lunatic or other public asylum, or in any common gaol or house of correction, it is sufficient service to deliver the summons to the gate-keeper or lodge-keeper of the asylum, gaol, or house of correction (*h*).

Service where house closed.

1041. Where a defendant keeps his house or place of dwelling or place of business closed, so as to prevent a bailiff from serving a summons, it is sufficient service to affix such summons on the door of such house or place of dwelling or place of business (*i*).

Corporation.

1042. In the absence of any statutory provision regulating the service of process, service on a corporation aggregate may be made on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and when by any statute provision is made for service of any summons, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or incorporate, a summons may be served in the manner so provided (*k*).

Railway company.

1043. Service of a summons on a railway company may be effected by delivering the summons to a secretary, station master, or clerk of the company, at any station or office of the company within the district of the court in which the summons is to be served (*l*).

Defendant knowing of summons less than ten clear days before return day.

1044. Where a summons has been served in one of the modes hereinbefore mentioned, but it appears that it has come to the knowledge of the defendant less than ten clear days before the return day, the action may, at the discretion of the court, proceed or be adjourned, whether the defendant appears or not on such return day (*m*).

Defendant's violence.

1045. Where a bailiff is prevented by the violence or threats of the defendant, or of any other person in concert with him, from personally serving the summons, it is sufficient service to leave such summons as near to the defendant as practicable (*n*).

(*g*) County Court Rules, Ord. 7, r. 21.
(*h*) *Ibid.*, r. 22.
(*i*) *Ibid.*, r. 23.
(*k*) *Ibid.*, r. 26. The statutory provisions as to service on companies will be found in the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 135; the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 134; the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 138; and the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 116, 274. See, generally, titles COMPANIES, Vol. V.; CORPORATIONS, p. 395, *ante*; PRACTICE AND PROCEDURE.
(*l*) County Court Rules, Ord. 7, r. 27.
(*m*) *Ibid.*, r. 28.
(*n*) *Ibid.*, r. 25

SECT. 2. Summons and Service.

1046. Any summons or other process may be served or a warrant executed within five hundred yards of the boundary of the district of the court from which the same issued by the bailiff of such court, or, if the judge of such court so orders, by such bailiff within the district of any other court (*o*).

Metropolitan courts.

In cases arising in the metropolitan courts (*p*) the summons must be served by a bailiff of the court within the district of which the defendant dwells or carries on business, unless the court otherwise specially orders, but this provision does not affect the above-mentioned rule as to service within five hundred yards of the boundary of the district of the court from which the summons issues (*q*).

Service under extended jurisdiction.

1047. In actions where the claim exceeds £50 brought by virtue of the County Courts Act, 1903 (*r*), an ordinary summons (except in an action of ejectment (*s*)) must be issued for service in the home district twenty-five clear days, and for service in a foreign district twenty-eight clear days, at least before the return day, and must be served in either case at least twenty clear days before the return day (*t*).

Mode of such service.

Service may be effected personally, or in special cases in the manner prescribed for serving ordinary summonses (*a*), or in the manner in which a default summons may be served (*b*), or under an order for substituted service (*c*). Where service is effected otherwise than by a bailiff, an affidavit of service must be sent to the registrar within three clear days after the day of service (*d*).

Successive summons.

1048. A successive summons (*e*) may, by leave of the court and subject to the following provisions, be served by the plaintiff, or some clerk or servant in his personal employ, or by the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them (*f*). Where service of such a summons is effected otherwise than by a bailiff it must be effected either by delivering the summons to the defendant personally or in special cases in the manner set out above (*g*), or under an order for substituted service (*h*). Where service of such a summons is

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 77.
(*p*) See p. 448, *ante*.
(*q*) County Court Rules, Ord. 7, r. 29.
(*r*) 3 Edw. 7, c. 42.
(*s*) See p. 435, *ante*.
(*t*) County Court Rules, Ord. 22A, r. 2. In actions under this extended jurisdiction the term "home" district and court is used for the district and court in which proceedings are commenced, and the term "foreign" district and court for the district and court to which the action may be sent for trial under the provisions of the County Courts Act, 1903 (3 Edw. 7, c. 42), s. 5.
(*a*) See p. 468, *ante*.
(*b*) See p. 473, *post*.
(*c*) County Court Rules, Ord. 22A, r. 3. As to substituted service, see County Court Rules, Ord. 7, r. 40; and p. 469, *ante*.
(*d*) County Court Rules, Ord. 22A, r. 4.
(*e*) See p. 465, *ante*.
(*f*) County Court Rules, Ord. 7, r. 29A (1).
(*g*) See p. 465, *ante*.
(*h*) County Court Rules, Ord. 7, r. 29 A (2).

effected otherwise than by a bailiff a copy thereof, indorsed with the date, place, and mode of service and an affidavit of service according to the prescribed form, with modifications (if necessary), must, within three clear days after the day of service or such further time as may be allowed by the registrar of the court issuing the summons, be delivered or transmitted to such registrar by the plaintiff (*i*).

Default summonses.

1049. Default summonses must be personally served within a period of twelve months from their date; but if any defendant mentioned in the summons has not been served, the plaintiff may, before the expiration of twelve months, apply to the registrar, and if the registrar is satisfied that reasonable efforts have been made to serve such defendant, or that there is some other good reason why service has been delayed, he may issue a successive summons (*k*) for a further period of twelve months, and so from time to time during the currency of the successive summons, and such successive summonses will be a continuance of the action on and from the day on which the plaint was entered (*l*).

Partners.

1050. Where a default summons is issued against partners in the name of the firm, it is sufficiently served on the firm if served personally on any one of the partners (*m*).

Corporations.

Where a default summons is issued against a corporation, or against any other defendant or body of defendants of a like nature, it is sufficiently served on such corporation or other defendant or body of defendants if served in accordance with the provisions as to service of an ordinary summons upon a corporation (*n*).

Evasion of service of default summons.

1051. Substituted service cannot be effected in the case of a default summons (*o*), but where personal service of a default summons cannot be effected, and the judge or registrar is satisfied by affidavit that reasonable efforts have been made to effect such service, and either that the summons has come to the knowledge of the defendant or that he wilfully evades service of the same, the judge or registrar can order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as he may think just (*p*).

Mode of service of default summons.

1052. A default summons may be served in any district in which the defendant may be met with by (1) a bailiff of a court, and (2) when so requested at the entry of the plaint (*q*) by the plaintiff or some clerk or servant in his permanent and exclusive employ, or

(*i*) County Court Rules, Ord. 7, r. 29A (3).
(*k*) See p. 465, *ante*.
(*l*) County Court Rules, Ord. 7, r. 30.
(*m*) *Ibid.*, r. 31.
(*n*) *Ibid.*, r. 32. As to a summons issued against a company, see p. 461, *ante*.
(*o*) *Ibid.*, r. 40.
(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 86 (5). For form of order giving leave to proceed under this provision, see County Court Rules, Appendix, Form 46.
(*q*) See p. 466, *ante*.

SECT. 2. Summons and Service.

by the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the summons, who might be so employed to serve a writ in an action in the High Court. If in any case in which no request has been made at the entry of the plaint any difficulty is experienced by the bailiff in effecting service, the summons may, by leave of the registrar, be served by the plaintiff or by the plaintiff's solicitor (*r*).

Service otherwise than by bailiff.

Where a default summons has been served otherwise than by a bailiff, a copy of the summons, with the date and place of service indorsed thereon, and an affidavit of service, must, within three clear days or such further time as may be allowed by the registrar of the court issuing the summons, be delivered to the registrar by the plaintiff. Where an order is made giving liberty to proceed as if personal service had been effected, the plaintiff must (unless the defendant gives notice of defence or admission of the debt), after the expiration of the time limited for giving notice of the defence, but before or at the time of entering up judgment, deliver to the registrar the order to proceed, and, where conditions are imposed by the order, an affidavit showing that such conditions have been complied with (*s*).

Effect of service on statute of limitations.

1053. Where a default summons has been served in due time to prevent the operation of a statute of limitations, and either party dies after the service and after the lapse of the period within which it is provided by the statute that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party, within one year from the day of service of the summons (*t*).

Failure to return within twelve months.

1054. Where a default summons has not been returned to the registrar within twelve months from the date of its issue, it must be struck out of the plaint book, unless the time for its service has been extended (*a*).

Exchange for ordinary summons.

A default summons may at the request of the plaintiff be exchanged without fee for an ordinary summons upon the former being filed in court within twelve months of its issue (*b*).

Transmission of summons for service in foreign district.

1055. A summons for service in a foreign district must be transmitted with a copy for the bailiff of the foreign court within twenty-four hours after the plaint is entered with a letter in the prescribed form unless the judge orders it to be served by the bailiff of the home court. Notice of non-service must be sent by the registrar to the plaintiff. Similarly notice of doubtful service must be sent by the registrar to the plaintiff in the prescribed form where it appears from the indorsement on the summons that it is doubtful that the summons has come to the knowledge of the defendant (*c*).

(*r*) County Court Rules, Ord. 7, r. 33.

(*s*) *Ibid.*, r. 34. For form of affidavit of service, see County Court Rules, Appendix, Form 37.

(*t*) *Ibid.*, r. 37.

(*a*) *Ibid.*, r. 35.

(*b*) *Ibid.*, r. 38.

(*c*) County Court Rules, Ord. 2, rr. 5 & 6. In the metropolitan districts the

SUB-SECT. 4.—*Special Duties of Bailiff as to Service.*

SECT. 2. Summons and Service.

1056. Where the bailiff to whom a summons has been delivered for service ascertains in sufficient time before the return day, and before notice of non-service has been sent, that the defendant has removed from the address given on the summons to some other address within the district, he must effect service of the summons as if the actual address had been given on the summons, and indorse the new address upon the copy retained by him (*d*). Indorsement where defendant removed to new address.

1057. If the service of a summons has been personal, the bailiff who served the same must indorse on the copy of the summons delivered to him by the registrar the fact of such service; and if the service has not been personal, he must indorse on such copy the mode of service so as to show that the provisions as to service which are applicable to the case have been complied with, and any statement made by the person to whom the summons was delivered, and any other circumstance from which it may be inferred that the service of the summons has come to the knowledge of the defendant; and in every case of service the bailiff must indorse on such copy the place where service was effected; and if the summons has not been served, the bailiff must indorse on such copy the reason of such non-service; and all indorsements on summonses must be signed by the bailiff. The high bailiff must deliver to the registrar the copy of every summons which has been served, and also the summons itself when not served, together with the list of all summonses (*e*), and such copies and summonses must be produced by the registrar or high bailiff, as the judge may require (*f*). Indorsement of mode of service.

1058. Where an ordinary summons required to be served in a home district has not been served, the high bailiff must forthwith give notice to the plaintiff of the fact of such non-service according to the prescribed form (*g*). Notice of non-service of ordinary summons.

1059. Where by the indorsement on the copy of an ordinary summons required to be served in a home district it appears that the summons was delivered to some person at the place mentioned in the summons as the residence or place of business of the defendant, but from the indorsement of the statement made by such person it appears doubtful whether the court will be satisfied that the service has come to the knowledge of the defendant before Notice of doubtful service of ordinary summons.

letter need not be sent except with default summonses (County Court Rules, Ord. 2, r. 5). For forms of letter, see County Court Rules, Appendix, Forms 27, 28; and for forms of notice of non-service or doubtful service, see *ibid.*, Forms 30, 31.

(*d*) County Court Rules, Ord 2, r. 22.

(*e*) See note (*n*), p. 476, *post.*

(*f*) County Court Rules, Ord. 2, r. 23. As to forms of indorsement, see County Court Rules, Appendix, Forms 29, 32, and 34.

(*g*) County Court Rules, Ord. 2, r. 24. As to form of notice, see County Court Rules, Appendix, Form 30. As to the meaning of home district, see p. 468, *ante.*

SECT. 2. Summons and Service.

the return day, the high bailiff must forthwith send to the plaintiff a notice according to the prescribed form (*h*).

Service on company. Inquiry by bailiff.

1060. Where a summons is issued against a company registered under the Companies Acts, the bailiff to whom such summons is delivered for service must ascertain at the address given on the summons whether the registered office of the company is situate at such address. If the bailiff ascertains, either by seeing the words "registered office" painted or affixed on the outside of the premises, or by inquiry at the premises, that the registered office of the company is situate at the address given on the summons, he must effect service of the summons at such address, and must indorse on the copy of the summons the fact and mode of such service, and the fact that he has ascertained in one or other of the modes aforesaid that the registered office of the company is situate at the address given and there effect service. If the bailiff cannot ascertain the correct address of the registered office or discovers such address to be otherwise than stated on the summons, he must make a special return accordingly (*i*).

Service of ordinary summons out of district.

1061. Where an ordinary summons is required to be served in a foreign district, the high bailiff of the foreign court must, eight clear days at least before the return day, transmit the copy thereof to the registrar of the home court duly indorsed and signed by the bailiff (who must name the court of which he is a bailiff), and also the summons itself when not served (*k*). Where the amount claimed in the action exceeds £50, the notice necessary is eighteen clear days (*l*).

Neglect of bailiff of foreign district to return service.

Where the high bailiff of a foreign court neglects to return to the registrar of the home court the copy of an ordinary summons the judge of the home court may, unless the high bailiff shows cause to the contrary, make an order directing the high bailiff to pay to the plaintiff such sum as the judge may think reasonable, as compensation for any loss of time and expense which may have been caused to the plaintiff by such neglect (*m*).

High bailiff to deliver list of ordinary summonses served.

1062. Seven clear days at least before the day of holding any court the high bailiff must deliver to the registrar a list of all ordinary summonses on plaint before judgment issued to him, and returnable at such court, stating therein the mode of service or the cause of non-service of each summons (*n*). In cases where the amount claimed exceeds £50, the time required is seventeen clear days (*o*).

Notice of service and non-service of default summons.

1063. Within two days after the service of a default summons, the high bailiff of the court in the district of which it has been

(*h*) County Court Rules, Ord. 2, r. 25; and see County Court Rules, Appendix, Form 31 (form of notice).

(*i*) County Court Rules, Ord. 2, r. 26; and see County Court Rules, Appendix, Forms 30, 32, and 33.

(*k*) County Court Rules, Ord. 2, r. 27. As to the meaning of foreign district, see p. 468, *ante*.

(*l*) County Court Rules, Ord. 22A, r. 5.

(*m*) County Court Rules, Ord. 2, r. 29; and see County Court Rules, Appendix, Forms 353, 354.

(*n*) County Court Rules, Ord. 2, r. 30.

(*o*) County Court Rules, Ord. 22A, r. 5.

served must send notice thereof to the plaintiff according to the prescribed form, and must return the copy of the summons duly indorsed to the registrar of the court from which it is issued; and where any such summons cannot be served within one month from the date of issue, the high bailiff of the court in the district of which it is to be served must send to the plaintiff a notice stating why it has not been served, and must send a similar notice at the end of every one month during which it remains in force and unserved (*p*).

SUB-SECT. 5.—*Service out of England and Wales.*

Service out of England and Wales, when allowed.

1064. Service out of England and Wales of a summons or notice of a summons may be allowed by the judge (*q*) whenever—

(1) The whole subject-matter of the action is land situate within the district of the court (with or without rent or profits); or

(2) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the district of the court, is sought to be construed, rectified, set aside, or enforced in the action; or

(3) Any relief is sought against any person residing or carrying on business within the district of the court, or sued in the court by leave of the judge or registrar (*r*); or

(4) The action is for the administration of the personal estate of any deceased person who had his last place of abode within the district of the court, or for the execution (as to property situate within the district) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of England; or

(5) The action is founded on any breach or alleged breach within the district of the court of any contract wherever made which, according to the terms thereof, ought to be performed within England and Wales, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or

(6) Any injunction is sought as to anything done or to be done in the district of the court, or any nuisance in such district is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(7) Any person out of England and Wales is a necessary or proper party to any action properly brought in the court against some other person duly served in England or Wales (*s*).

How discretion to be exercised.

1065. Where leave is asked from the judge to serve a summons in Scotland or in Ireland, if it appears to the judge that there may

(*p*) County Court Rules, Ord. 2, r. 31. For forms of notice, see County Court Rules, Appendix, Forms 35, 36.

(*q*) The powers of the court can only be exercised by the judge or by one judge acting for another (County Court Rules, Ord. 7, r. 48A).

(*r*) See p. 450, *ante*.

(*s*) County Court Rules, Ord. 7, r. 41. These provisions are disjunctive (*Tassell* v. *Hallen*, [1892] 1 Q. B. 321). The rules of the county court as to service out of England and Wales are *mutatis mutandis* identical with R. S. C., Ord. 11, dealing with service out of the jurisdiction. The necessary authorities should be sought for in title PRACTICE AND PROCEDURE.

SECT. 2. Summons and Service.

be a concurrent remedy in Scotland or Ireland (as the case may be), he shall have regard to the comparative cost and convenience of proceeding in the district of the court or in the place of residence of the defendant or person sought to be served, and particularly to the powers and jurisdiction, under the statutes establishing or regulating them, of the Sheriff's Courts or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland, respectively (*t*).

Probate actions.

1066. In Probate actions service of a summons or notice of a summons out of England and Wales may be allowed by leave of the judge (*u*).

Application to be supported by evidence.

1067. Every application for leave to serve a summons or notice of a summons on a defendant out of England and Wales must be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or may probably be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave can be granted, unless it is made sufficiently to appear to the court that the case is a proper one for service out of England and Wales under these rules (*a*). Leave cannot be granted to serve a default summons on a defendant out of England and Wales (*b*).

Order to fix a day for appearance.

1068. Any order giving leave to effect such service or give such notice must fix a day on which the action will be proceeded with and on which the defendant is to appear, such day to be so fixed as to allow sufficient time after service for the defendant to appear, regard being had to the place or country where or within which the summons is to be served or the notice given (*c*).

Notice where summons to be served.

1069. When the summons itself is to be served on the defendant, a notice according to the prescribed form must be annexed to the summons and served therewith, and the summons and notice must be served in the manner in which default summonses are required to be served (*d*).

Notice in lieu of summons.

1070. When the defendant is neither a British subject nor in British dominions, notice of the summons according to the prescribed form, and not the summons itself, must be served on him; and such notice must be served in the manner in which default summonses are required to be served (*e*).

Proof of service.

1071. Where leave is given under these provisions to serve a summons or notice of a summons on a defendant out of England

(*t*) County Court Rules, Ord. 7, rr. 42, 48A.
(*u*) *Ibid.*, rr. 43, 48A.
(*a*) *Ibid.*, r. 44.
(*b*) *Ibid.*, r. 44A.
(*c*) *Ibid.*, r. 45. For form of the order for service, see County Court Rules, Appendix, Form 47.
(*d*) County Court Rules, Ord. 7, r. 46. As to form of notice, see County Court Rules, Appendix, Forms 48, 49. As to the service of default summonses, see p. 473, *ante*.
(*e*) County Court Rules, Ord. 7, r. 47; and see the preceding note.

and Wales, and such defendant does not appear on the day fixed for proceeding with the action, the plaintiff must before proceeding file an affidavit of service of the summons or notice, as the case may be (*f*).

Application to set aside service.

1072. A defendant served with a summons or notice of a summons under this order may apply, on notice, to the judge to set aside the service of such summons or notice upon him, or to discharge the order authorising such service (*g*). Where a judge has wrongly made an order for service out of England and Wales an application under this provision is not obligatory; the High Court, notwithstanding the existence of this remedy, can in its discretion allow a prohibition in such a case (*h*).

SUB-SECT. 6.—*Summons and Service under Bills of Exchange Act*, 1855.

Form of summons and service.

1073. A summons under the above Act (*i*) must be in the prescribed form, and particulars of demand must be filed on the entry of the plaint stating that the bill or note became due and payable within six months before the commencement of the action (*k*). The holder of the bill may issue one summons against all or any of the parties to the bill (*l*). The summons must be served within twelve months (*m*), and the rules of service applicable to default summonses are applicable to this summons (*n*). An order for substituted service cannot be obtained in the case of this summons (*o*), but where the defendant evades service an order to proceed as if service had been effected may be obtained *ex parte* on affidavit (*p*).

SUB-SECT. 7.—*Infants and Persons of Unsound Mind.*

Appointment of guardian *ad litem* for infant or lunatic.

1074. Where it appears on the face of the proceedings that any defendant to an action or matter is an infant or a person of unsound mind not so found by inquisition at any time after the service of the summons, and not less than six clear days before the return day, a guardian *ad litem* to such infant or person of unsound mind may be appointed by the registrar, on application made to him on behalf of such infant or person of unsound mind, on affidavit according to the prescribed form accompanied by a written consent of the proposed guardian to act as such guardian. Where such appointment is made, the registrar shall forthwith send notice by post of such appointment to the plaintiff, according to the prescribed form (*q*).

(*f*) County Court Rules, Ord. 7, r. 48.
(*g*) *Ibid.*, r. 49. As to the practice on such an application, see p. 507, *post*.
(*h*) *Channel Coaling Co.* v. *Ross*, [1907] 1 K. B. 145.
(*i*) 18 & 19 Vict. c. 67. As to jurisdiction, see p. 447, *ante*.
(*k*) County Court Rules, Ord. 35, r. 1. As to form of summons and particulars, see County Court Rules, Appendix, Forms 25A, 26A.
(*l*) Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 6.
(*m*) County Court Rules, Appendix, Form 25A.
(*n*) See p. 473, *ante*.
(*o*) County Court Rules, Ord. 7, r. 40.
(*p*) *Ibid.*, r. 39. For forms of affidavit and order in such a case, see County Court Rules, Appendix, Forms 43, 46.
(*q*) County Court Rules, Ord. 7, r. 50 (1), (2). As to the appointment of a guardian *ad litem*, where it does not appear on the face of the proceedings

SECT. 2. Summons and Service.

Where no such application is made, the registrar must on the sixth day before the return day send notice by post to the plaintiff that no such application has been made according to the prescribed form. The plaintiff must thereupon, before proceeding further with the action or matter, apply to the judge for an order that some proper person be assigned guardian *ad litem* of such defendant, by whom he may appear and defend, and, if necessary, for a postponement of the trial (*r*).

Order by judge appointing guardian.

1075. On the hearing of the application, the judge, if satisfied with the proposed guardian, may appoint him to act as such guardian; but if not so satisfied, he may appoint any other person willing to act as guardian; or in default of such person, he may appoint the registrar to act as guardian; and the action or matter thenceforth proceeds as if a guardian had been appointed on behalf of the defendant. The judge may, if necessary, on the hearing of such application, postpone the trial (*s*).

Where infant sued for debt or liquidated demand.

1076. Where an infant is sued for a debt or other liquidated demand, the notice that no application for appointment has been made need not be sent, nor need the plaintiff apply for such appointment, nor the judge make such appointment, unless in any case the registrar thinks it necessary for the protection of such infant that such notice should be sent, or the judge directs such notice to be sent (*t*).

Cases under extended jurisdiction.

1077. Where the amount claimed exceeds £50 the appointment should be made twelve clear days before the return day, or where no appointment is made the notice should be sent on the twelfth day before the return day (*a*).

Entry of appointment.

1078. Where a guardian *ad litem* is appointed, such appointment must be entered on the summons and in the minute book, and on all subsequent proceedings (*b*).

Liability for costs.

1079. A guardian *ad litem* is not personally liable to any costs not occasioned by his personal negligence or misconduct (*c*).

that the defendant is an infant or lunatic but appears during the course of the proceedings, see County Court Rules, Ord. 7, r. 51 (1), (2), (3). As to the necessary qualifications of a guardian *ad litem* and consent by such guardian, see titles INFANTS AND CHILDREN; LUNATICS AND PERSONS OF UNSOUND MIND; PRACTICE AND PROCEDURE. As to forms of notice and affidavits, see County Court Rules, Appendix, Forms 50—56.

(*r*) County Court Rules, Ord. 7, r. 50 (3), (4). The application must be made on affidavit according to the prescribed form, and notice thereof, together with a copy of such affidavit, must three clear days at least before the day in such notice named for hearing be served upon the person with whom or under whose care such defendant was at the time of service of the summons, and must also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) be served upon or left at the dwelling-house of the father or guardian (if any) of such infant: provided that the registrar may, on the application of the plaintiff, dispense with such last-mentioned service (*ibid.*, r. 50 (5)).

(*s*) *Ibid.*, r. 50 (6).

(*t*) *Ibid.*, r. 50 (7).

(*a*) County Court Rules, Ord. 22A, r. 7.

(*b*) County Court Rules, Ord. 7, r. 52.

(*c*) *Ibid.*, r. 53. As to the duties of a guardian *ad litem*, see *Knatchbull* v. *Fowle* (1876), 1 Ch. D. 604.

SECT. 3.—*Petition and Service.*

SECT. 3. Petition and Service.

Equity proceedings.

1080. Proceedings under the Trustees Relief Acts or under the Trustee Acts, proceedings relating to the maintenance or advancement of infants, proceedings under the Settled Land Acts and proceedings where any person claiming to be interested in a fund in court which he desires the court to deal with, must be commenced by filing a petition, intituled in the matter of the Act under which the proceeding is taken and of the trust for settlement, with as many copies of the petition as there are respondents to be served (*d*).

Form and service of petition.

At the foot of every petition presented to the court, and of every copy thereof, a statement must be made of the persons, if any, intended to be served therewith; and if no person is intended to be served a statement to that effect must be made at the foot of the petition and of every copy thereof (*e*). Such petitions must be filed and served by the bailiff ten days at least before the hearing in accordance with the rules as to service of ordinary summons (*f*).

Service out of England and Wales.

The provisions as to service of summonses out of England and Wales apply to the service of petitions in the same respect (*g*).

Petition where fund chargeable with duty.

1081. Every petition for dealing with money or securities in court chargeable with any duty payable to the Revenue, or with the dividends on any such securities, must contain a statement whether such duty has or has not been paid (*h*).

SECT. 4.—*Consolidation, stay, and transfer of Actions.*

SUB-SECT. 1.—*Consolidation and stay of Actions.*

Several actions between same parties.

1082. Where several actions are brought by the same plaintiff against the same defendant in the same court for or in respect of different causes of action which might have been joined in one action, the defendant may on notice to the plaintiff apply to the judge that the said actions may be consolidated (*i*).

Different plaintiffs, but same defendant.

1083. Where several actions are brought by different plaintiffs against the same defendant in the same court for or in respect of causes of action arising out of the same breach of contract, wrong, or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability in the said several actions is concerned by the decision in such one of the said actions as may be selected by the judge, and on notice to the plaintiff, apply to the judge for

(*d*) County Court Rules, Ord. 38, rr. 1, 23, 24. For the general jurisdiction of the county court in equity, see p. 443, *ante*. For form of petition, see County Court Rules, Appendix, Form 340.

(*e*) County Court Rules, Ord. 38, r. 2.

(*f*) *Ibid.*, rr. 3, 4. For form of notice, see County Court Rules, Appendix, Form 341. As to the rules for the service of ordinary summonses, see pp. 468 *et seq.*, *ante*.

(*g*) County Court Rules, Ord. 7, r. 55.

(*h*) County Court Rules, Ord. 38, r. 31.

(*i*) County Court Rules, Ord. 8, rr. 1, 3. As to the method of making such an application, see p. 507, *post*. For form of order of consolidation, see County Court Rules, Appendix, Form 59.

SECT. 4. **Consolidation, stay, and transfer of Actions.**

an order to stay the proceedings in the actions other than the one so selected, until judgment is given in such selected action (*k*).

Upon the hearing of any application for consolidation of actions or for stay of proceedings the judge may impose such terms and conditions and make such order in the matter as may be just (*a*).

Judgment for defendant in selected action.

If judgment in a selected action is given in favour of the defendant, he is entitled to his costs up to the date of the order staying proceedings against every other plaintiff whose action is stayed, unless such plaintiff gives the registrar within one month from such judgment notice in writing to set down his action for trial. On judgment in a selected action being given, the registrar must send to every other plaintiff a notice according to the prescribed form, and if any such plaintiff gives notice to the registrar to set down his action for trial, the registrar must appoint a day for the trial, and send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day (*b*).

Judgment against defendant.

If judgment in a selected action is given against the defendant, the plaintiffs in the actions stayed are at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs. Thereafter similar provisions apply as in a case where judgment is given in favour of the defendant (*c*).

Same plaintiff, but several defendants.

1084. Where several actions of contract are brought by the same plaintiff against several defendants in the same court, and the event of the said actions depends on the finding of the judge or jury on some question common to all the said actions, the judge may at any time select one of such actions for trial and stay the proceedings in all the other actions until the judgment in the action so selected is given. After judgment in such selected action, unless the plaintiff and the defendants in the other actions, or any of them, submit to have judgment passed and entered therein in accordance with the judgment in the action so selected, such other actions must proceed in the same manner as if they had not been stayed. On receipt of notice from the plaintiff or defendant in any such action to set down the action for trial the registrar must appoint a day for the trial, and must send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day (*d*).

SUB-SECT. 2.—*Transfer of Actions.*

Transfer of actions.

1085. If a judge is satisfied by either party to an action or matter pending in his court that such action or matter can be more conveniently or fairly tried or heard in some other court, he may order that the same be transferred to such other court, or, if the judge is interested in any action or matter pending in his court, he must

(*k*) County Court Rules, Ord. 8, rr. 2, 3. For form of undertaking and order to stay, see County Court Rules, Appendix, Forms 60, 61.
(*a*) County Court Rules, Ord. 8, r. 4.
(*b*) *Ibid.*, r. 5. For form of notice, see County Court Rules, Appendix, Form 62.
(*c*) County Court Rules, Ord. 8, rr. 5, 6; and see the preceding note.
(*d*) *Ibid.*, r. 7.

order that the same be transferred to some convenient court of which he is not the judge, at his discretion. In either case the registrar of the court in which the action or matter was commenced must advise the registrar of the court to which it has been sent of the transfer, and thenceforth all proceedings therein must be taken in such court as if the action or matter had been commenced therein (*e*).

Equity proceedings.

If during the progress of equity proceedings (*f*) it appears to the court that such proceedings can be more conveniently heard in another court, the same can be transferred and taken in such other court (*g*).

Actions where parties have same interest.

Actions commenced in different courts by parties in the same interest, must upon application by any of the parties be transferred to the court in which the first plaint was entered, and there be proceeded with in the same way in all respects as if they had been commenced in that court (*h*).

Remitted action where registrar has acted as solicitor.

Where the registrar of the court to which any action, matter, or proceeding is transferred from the High Court, or a partner or clerk of such registrar, has acted as solicitor for any party to such action, matter, or proceeding in the High Court, the judge may order such action, matter, or proceeding to be transferred to some other court under the above-named provisions (*i*).

Application for transfer.

1086. Where application is intended to be made for the transfer of any action under the foregoing provisions, three clear days' notice thereof must be given by the applicant to the registrar of the court in which such action is pending and to all parties who may be affected thereby; but the judge may at any time, by consent of all parties, or without such consent if he thinks fit, order a transfer, although this notice has not been given. When a transfer is ordered, the judge may make such order as to the costs incurred before or occasioned by the transfer as he may think fit (*k*).

SUB-SECT 3.—*Transfer for Trial of Actions under extended Jurisdiction.*

Transfer for trial of actions under extended jurisdiction.

1087. An action which is commenced for a claim exceeding £50, may be transferred for trial to a court in the same district (named for this purpose by Order in Council) in which due provision has been made for such trial without interference with the ordinary jurisdiction of the court, and such court has for the purposes of jurisdiction, trial, and judgment the same jurisdiction as the court in which the action was commenced (*l*).

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 85. As to applications for transfer, see note (*k*), *infra*.

(*f*) See p. 443, *ante*.

(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75.

(*h*) County Court Rules, Ord. 8, r. 8.

(*i*) County Court Rules, Ord. 33, r. 19; Ord. 8, r. 9. As to remitted actions generally, see p. 438, *ante*. As to the application for transfer, see note (*k*), *infra*.

(*k*) County Court Rules, Ord. 8, r. 9. For forms of order of transfer and notice of day of trial, see County Court Rules, Appendix, Forms 120, 121.

(*l*) County Courts Act, 1903 (3 Edw. 7, c. 42), s. 5. Under this section Orders in Council have been issued naming the courts in which such actions should be tried; see Yearly County Court Practice, 1909, Vol. I., Appendix.

SECT. 4. **Consolidation, stay, and transfer of Actions.**

Issue of ordinary and successive summons.

1088. Where an ordinary summons is to be issued, the registrar of the home court must on the filing of the præcipe send to the registrar of the foreign court a letter according to the prescribed form requesting him to fix a day for the trial; and immediately on the receipt of such letter the registrar of the foreign court must fix a day accordingly, such day to be so fixed as to allow the summons to be duly served and must send to the registrar of the home court a letter according to the prescribed form informing him of the day on which he has fixed that the trial shall take place. On the receipt of such letter the registrar of the home court must enter the plaint and issue the summons, and must insert in the plaint note and in the summons the date and place of trial, and must annex to the plaint note and summons a notice according to the prescribed form. When the summons has not been served, and a successive summons may be issued, the registrar of the foreign court must on request fix another day for the trial, and the foregoing procedure must be followed (*m*).

Issue of default summons and notice of defence.

1089. Where a default summons is issued and the defendant gives notice of his intention to defend, or is let in to defend, the registrar of the home court must on the filing of the notice, or on the making of the order letting the defendant in to defend, send to the registrar of the foreign court a letter according to the prescribed form requesting him to fix a day for the trial. Immediately on the receipt of such letter the registrar of the foreign court must fix a day accordingly, such day to be so fixed as to allow at least six clear days' notice to be given of the day so fixed, and must send to the registrar of the home court a letter according to the prescribed form informing him of the day on which he has fixed that the trial shall take place. On the receipt of such letter the registrar of the home court must send to the plaintiff and defendant notice of trial according to the prescribed forms and must annex to such notice a notice according to the prescribed form (*n*).

Transmission of documents after service.

1090. When an ordinary summons has been served and the copy returned to the registrar of the home court, or when notice of trial of a default summons has been sent, the registrar of the home court must transmit all documents filed in the action to the registrar of the foreign court, who must enter the action for trial in his court. On the action being sent to the foreign court the registrar of the home court must make in red ink, against the entry of the action in the plaint book, an entry of its having been so sent, with the name of the foreign court, and the date when the action is sent there for trial, and must send a copy of the entries in the plaint book, under the seal of the court, to the registrar of the foreign court, who must enter the

(*m*) County Court Rules, Ord. 22A, r. 22. For forms of letters and notice, see County Court Rules, Appendix, Forms 41A (1), 41B, 41C. For the meaning of "home" and "foreign" court, see p. 472, *ante*.

(*n*) County Court Rules, Ord. 22A, r. 23. For forms of letters and notices, see County Court Rules, Appendix, Forms 41A (2), 41B, 41C, 38, 39.

particulars and proceedings in the action in a book to be kept for that purpose (*o*).

All proceedings in the action subsequent to the service of an ordinary summons, or the sending of notice of trial in the case of a default summons, and previous to the trial, must be taken in, and payment into court before trial must be made into, the foreign court (*p*).

SECT. 5.—*Defence and Counterclaim.*

SUB-SECT. 1.—*Notice of Defence.*

Notice of statutory defence and counterclaim necessary.

1091. Except as hereinafter set out, the defendant in an action in the county court can appear and contest the action without any notice of defence. Subject to the power of amendment conferred by the County Courts Act, a defendant is not allowed to set off or set up by way of counterclaim any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence, and to claim and have the benefit of, infancy, coverture, or any Statute of Limitations, or of his discharge under any statute relating to bankrupts or any Act for relief of insolvent debtors, without the consent of the plaintiff, unless the prescribed notice thereof has been given to the registrar; and in every case in which the practice of the court requires such notice to be given the registrar of the court must, as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business, but it is not necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the registrar (*q*).

Form of notice of statutory defence.

1092. Where in any action the defendant relies on any statutory defence, or on any defence of which he is required by any statute to give notice, or on any of the defences named above, he must in his statement (except in the case of the Statutes of Limitations) set forth the year, chapter, and section of the statute, or the short title thereof, and the particular matter on which he relies, or otherwise sufficiently indicate the nature of the defence on which he relies (*r*). But the plaintiff is not entitled to maintain an action

(*o*) County Court Rules, Ord. 22A, r. 24. For form of book, see County Court Rules, Appendix, Part II.

(*p*) County Court Rules, Ord. 22A, r. 25.

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 82. This section is in effect extended to notice of any statutory defence by County Court Rules, Ord. 10, r. 18; see the next note. As to counterclaim, see p. 491, *post*.

(*r*) County Court Rules, Ord. 10, r. 18. The following are instances of statutory defences notice of which must be served—Defence by bailiff under County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 54 (see p. 427, *ante*) (*Denny* v. *Bennett* (1896), 44 W. R. 333); defence of no notice of action under Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 4 (*Conroy* v. *Peacock*, [1897] 2 Q. B. 6); defence of no memorandum under Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4 (*Brutton* v. *Branson*, [1898] 2 Q. B. 219); defence of non-delivery of signed bill of costs by a solicitor under Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37 (*Lewis & Davies* v. *Burrell* (1898), 77 L. T. 626); defence setting up the Gaming Act, 1892 (55 & 56 Vict. c. 9), s. 1 (*Willis* v. *Lovick*, [1901] 2 K. B. 195). Where a notice of defence under the Gaming Act, 1845 (8 & 9 Vict. c. 109), has been served, the defendant at the trial can set up the Gaming Act, 1892 (55 & 56 Vict. c. 9), as a defence on

SECT. 5. Defence and Counter-claim.

contrary to the provisions of the Gaming Acts, 1845 or 1892, by reason of those Acts not having been pleaded as a defence (*s*).

Time for and service of notice.

1093. Where a defendant intends to rely on any such special ground of defence, or upon any set-off or counterclaim, he must file in duplicate a notice stating thereon his name and address, together with a concise statement of his grounds of defence, or of his set-off or counterclaim, five clear days at least before the return day; and the registrar must thereupon, within twenty-four hours after receiving the same, transmit by post one copy of such notice and statement to the plaintiff. In case of non-compliance with these provisions, and of the plaintiff's not consenting at the trial to permit the defendant to avail himself of such defence, set-off, or counterclaim, the judge may, on such terms as he may think fit, adjourn the trial of the action to enable the defendant to give such notice (*t*). Where the amount of the claim exceeds £50 the notice required is ten clear days (*a*).

Infancy.

1094. The notice of the defence of infancy must set forth, so far as possible, the place and date of birth (*b*).

Coverture.

1095. Where a female defendant intends to rely on the defence of coverture, she must in her statement set forth, so far as she is able, the place and date of her marriage, together with the christian name and surname of her husband, and his address and description so far as known (*c*).

Statute of Limitations.

1096. The notice of defence of any Statute of Limitations must be in the prescribed form (*d*).

Bankruptcy.

1097. Where a defendant intends to rely on the defence of a release under any statute relating to bankrupts, he must in his statement set forth the date of his discharge and the court by which such discharge was granted (*e*).

Libel and slander.

1098. Where the defendant relies upon the fact that the libel or slander is true, he must set forth in his statement that the libel or slander complained of is true in substance (*f*).

Where the defendant does not rely upon the fact that the libel or slander is true, but relies in mitigation of damages on the cir-

the ground that his notice "sufficiently indicates the nature of the defence" under this provision (*Renton* v. *King* (1905), 21 T. L. R. 577). It seems advisable on the ground of saving costs of a possible adjournment to give notice that the defendant intends to apply for relief under the Money-lenders Act, 1900 (63 & 64 Vict. c. 51), although the court can exercise jurisdiction under that Act at any time during the proceedings.

(*s*) County Court Rules, Ord. 10, r. 18 (2), added March 18, 1909.

(*t*) County Court Rules, Ord. 10, r. 10. For form of notice of special defence, see County Court Rules, Appendix, Form 85.

(*a*) County Court Rules, Ord. 22A, r. 13.

(*b*) County Court Rules, Ord. 10, r. 12.

(*c*) *Ibid.*, r. 13.

(*d*) *Ibid.*, r. 14; *Eaton* v. *Tapley*, [1899] 1 Q. B. 953. For form of notice, see County Court Rules, Appendix, Form 85.

(*e*) County Court Rules, Ord. 10, r. 15.

(*f*) *Ibid.*, r. 16.

cumstances under which the libel or slander was published, or the character of the plaintiff, he must give particulars in his statement of the matters relating thereto as to which he intends to give evidence (*g*).

Where in a remitted action for libel or slander the defendant relies upon an apology, or payment into court and an apology (*h*), he must give notice in writing of such intention, signed by himself or his solicitor, to the registrar five clear days before the day appointed for the time of the action (*i*).

Gaming Acts.

1099. An agreement entered into before the day of trial to withdraw a notice of defence under the Gaming Acts is invalid (*k*). There is no appeal from the exercise of a judge's discretion as to whether or not he will allow an adjournment in order that a statutory defence may be pleaded (*l*).

Equitable defence.

1100. Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief on any equitable ground against the claim of the plaintiff, or any part thereof, he must in his statement show concisely the circumstances which give rise to such defence, and set forth separately each of the grounds of equitable defence (*m*).

Tender.

1101. A defence of tender is not available unless, at the time of filing the notice of such defence, the defendant makes payment into court (which may be without costs) of the amount alleged to have been tendered (*n*).

Plaintiff in representative capacity.

1102. Where a plaintiff sues on behalf of or for the benefit of others having the same interest, the defendant may avail himself of any defence in respect of each of the persons in whose behalf or for whose benefit the plaintiff so sues which he would have had against such persons if he had been plaintiff (*o*).

Where a plaintiff does not proceed against all of several persons jointly answerable (*p*), every defendant sued may avail himself of any defence or counterclaim to which he would have been entitled if all the persons liable were made defendants (*q*).

Default summons.

1103. Where a defendant intends to defend a default summons, notice of intention to defend must always be given, which notice

(*g*) County Court Rules, Ord. 10, r. 17; and see title LIBEL AND SLANDER.

(*h*) Under the Libel Act, 1843 (6 & 7 Vict. c. 96), ss. 1, 2.

(*i*) County Court Rules, Ord. 33, r. 4. For forms of notice, see County Court Rules, Appendix, Forms 86, 87.

(*k*) *Cooper* v. *Willis* (1906), 22 T. L. R. 582. When a defendant who has so agreed subsequently gives notice withdrawing his notice of withdrawal, the judge should give effect to the defence (*ibid.*). See also note (*s*), p. 486, *ante*.

(*l*) *Moon* v. *Lawler* (1903), 38 L. J. 231.

(*m*) County Court Rules, Ord. 10, r. 19. As to equitable defences generally, see p. 432, *ante*; and *Heap* v. *Marris* (1876), 2 Q. B. D. 630.

(*n*) County Court Rules, Ord. 10, r. 20. As to payment into court, see pp. 494, 495, *post*. As to tender generally, see titles, CONTRACT, Vol. VII., pp. 417 *et seq.*; MONEY AND MONEY LENDING.

(*o*) County Court Rules, Ord. 10, r. 1; and see p. 454, *ante*.

(*p*) See p. 454, *ante*.

(*q*) County Court Rules, Ord. 10, r. 7.

SECT. 5. Defence and Counter-claim.

must be communicated immediately by the registrar to the plaintiff or his solicitor by post, and at least six clear days' notice of trial must be given by the registrar to the plaintiff and defendant. Where the defendant neglects to give such notice, the judge or registrar must, upon an affidavit disclosing a defence upon the merits and satisfactorily explaining his neglect, let in the defendant to defend on such terms as he may think just (*r*). A defendant to a default summons cannot serve a third party notice before he gives notice of intention to defend (*s*).

Disclaimer of interest.

1104. A defendant in any action or matter may file a statement disclaiming any interest in the subject-matter thereof, or admitting or denying any of the statements in the plaintiff's particulars, or raising any question of law on such statements without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence, or which he intends to bring to the notice of the court. A copy of such statement must be filed therewith, and such copy must be transmitted by the registrar to the plaintiff: provided always that in exercising his discretion as to costs the judge must consider the fact of a defendant having or not having availed himself of the powers given by this provision. This provision applies to a plaintiff who is defendant by counterclaim (*t*).

Defence in ejectment by person interested not named as defendant.

1105. In an action of ejectment or for the recovery of possession of a tenement, any person not named as a defendant in the summons may by leave of the court be allowed to appear and defend on filing, in an action of ejectment twelve clear days, and in an action for the recovery of possession five clear days, at least before the return day an affidavit, together with as many copies thereof as there are plaintiffs and defendants, showing that he is in possession either by himself or his tenant of the property or some part thereof mentioned in the particulars (such part being described in the affidavit with reasonable certainty). Upon such affidavit being filed and leave given, the registrar must enter the name, address, and description of the person filing the affidavit in the plaint book as a defendant in addition to the name of every person originally made defendant, and must in an action of ejectment ten clear days, and in an action for the recovery of possession three clear days, at least before the return day give notice, according to the prescribed form, by post or otherwise, to the plaintiffs and the original defendants, that the person filing the affidavit has filed the same, and will appear and defend at the trial of the action, annexing to each notice a copy of the affidavit. In all subsequent proceedings in the action the person filing the affidavit must be named as a defendant (*a*).

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 86. As to default summonses generally, see p. 465, *ante*.

(*s*) County Court Rules, Ord. 11, r. 1 (2). As to third party notice, see p. 491, *post*.

(*t*) County Court Rules, Ord. 10, r. 9. For form of statement, see County Court Rules, Appendix, Form 83.

(*a*) County Court Rules, Ord. 10, r. 4. For form of notice, see County Court

SECT. 5.
Defence and Counter-claim.

Limitation of defence in action of ejectment.

In an action of ejectment or for the recovery of possession of a tenement any defendant may, in an action of ejectment twelve clear days, and in an action for the recovery of possession five clear days, at least before the return day, file with the registrar a notice in writing, together with a copy for the plaintiff, according to the prescribed form, that he intends to limit his defence to a part only of the property mentioned in the particulars, describing that part in such notice with reasonable certainty. The registrar must in an action of ejectment ten clear days, and in an action for the recovery of possession three clear days, at least before the return day send the copy of such notice by post to the plaintiff (*b*).

SUB-SECT. 2.—*Defence under the Bills of Exchange Act*, 1855.

Leave to defend.

1106. A defendant who is sued under the above Act (*c*) must apply for leave to defend and satisfy the judge or registrar on affidavit, which must be filed with a copy, that he has good grounds for defending the action, and must, if required, give security (*d*). Where leave is so given the registrar must send notice of trial and a copy of the affidavit to the plaintiff and notice of trial to the defendant (*e*).

Grounds for leave.

To obtain leave to defend the affidavit must disclose some defence, legal or equitable (*f*), and must set out facts not inconsistent with a good defence on the merits (*g*). It need not disclose a defence with a certainty necessary in pleadings, but is sufficient if it discloses reasonable and probable grounds for supposing that there is a defence (*h*). An order for leave must not be rescinded on affidavits contradicting the defence and answered by the defendant by affidavits raising a *bonâ fide* conflict of evidence (*i*). The order for leave may be set aside if it has been obtained fraudulently (*k*).

SUB-SECT. 3.—*Objection to the Jurisdiction.*

Objection to jurisdiction.

1107. If in any action of contract the plaintiff claims a sum exceeding £20, or in any action of tort the plaintiff claims a sum exceeding £10, and the defendant gives notice that he objects to the action being tried in the court, and gives security, to be

Rules, Appendix, Form 254. Where the claim exceeds £50 the notices required are twenty, ten, eighteen, and eight clear days respectively, both in this and the rule following (County Court Rules, Ord. 22A, r. 11).

(*b*) County Court Rules, Ord. 10, r. 5; and see the preceding note. For form of notice, see County Court Rules, Appendix, Form 255.

(*c*) 18 & 19 Vict. c. 67. As to jurisdiction, see p. 447, *ante*.

(*d*) *Ibid.*, s. 2; County Court Rules, Ord. 35, r. 2.

(*e*) County Court Rules, Ord. 35, r. 3. For forms of notice, see County Court Rules, Appendix, Forms 40, 41.

(*f*) As, for instance, non-joinder of a defendant (*Casella* v. *Darton* (1873), L. R. 8 C. P. 100).

(*g*) *Agra and Masterman's Bank* v. *Leighton* (1866), L. R. 2 Exch. 56; and see *Fuller & Co.* v. *Alexander Brothers* (1882), 52 L. J. (Q. B.) 103.

(*h*) *Clay* v. *Turley* (1857), 27 L. J. (EX.) 2; *Mathews* v. *Marsland* (1858), 27 L. J. (EX.) 148.

(*i*) *Brutton* v. *Thomas* (1858), 1 F. & F. 377; *Febart* v. *Stevens* (1860), 30 L. J. (EX.) 1.

(*k*) *Pollock* v. *Turnock* (1857), 1 H. & N. 741.

SECT. 5. Defence and Counter-claim.

approved of by the registrar, for the amount claimed and the costs of trial in the High Court, not exceeding in the whole the sum of £150, and the judge certifies that in his opinion some important question of law or fact is likely to arise, all proceedings in the court in any such action must be stayed. If in any such action the defendant do not object to the same being tried by the court, or fails to give the security aforesaid, the court must dispose of the action in the usual way; and the entry of the plaint in such action is a sufficient commencement of the action to prevent the operation of any Statute of Limitations applicable to the claim; these provisions do not, however, prevent the removal of any action from the court by writ of *certiorari* in the cases and subject to the conditions provided by the County Courts Act (*l*). A defendant who has applied for and obtained a new trial in the county court cannot object to the jurisdiction at the second trial (*m*).

Effect of certificate.

The effect of the judge's certificate is to put an end to the jurisdiction of the county court, and a plaintiff after the action has been stopped by this objection should commence his action *de novo* in the High Court, issuing his writ and following the ordinary procedure of that court (*n*).

Time and procedure for notice of objection.

1108. A defendant intending under these provisions to object to an action being tried in the court must give notice in writing to the registrar and to the plaintiff five clear days at least before the return day, by post or otherwise, according to the prescribed form, and must therein name the parties whom he proposes to be his sureties, or state therein his willingness to deposit money in lieu of giving security; and if he fails to give such security or make such deposit before the return day, or fails to give such notice of his intention to object as aforesaid, he is not entitled to object to the action being tried in the court. He must also after giving such notice as aforesaid apply *ex parte* to the judge on affidavit for his certificate that in his opinion some important question of law or fact is likely to arise in the action, and if the certificate is granted notice thereof must be sent by the registrar to the plaintiff by post or otherwise. The affidavit above referred to must specify any important questions of law or fact which are likely to arise in the action; and, in the case of a question of law, must further specify the facts which are relied on as likely to raise such question (*o*).

Objection by justice of the peace.

1109. A justice of the peace, if sued in the county court for anything done by him in the execution of his office, can object to the jurisdiction of the county court by serving a notice to that effect on

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 62.
(*m*) *Campbell* v. *Fairlie* (1880), 49 L. J. (Q. B.) 445.
(*n*) See *Flitters* v. *Allfrey* (1874), L. R. 10 C. P. 29.
(*o*) County Court Rules, Ord. 10, r. 6. For forms of notice of objection, affidavit, notice of grant of certificate, and bond after notice, see County Court Rules, Appendix, Forms 79—82. Where the amount claimed exceeds £50 the time of notice of objection is ten clear days (County Court Rules, Ord. 22A, r. 12). In the case of a bond being given the registrar can only inquire into the solvency of the surety, and not into his capacity for giving a valid bond (*Re Young* v. *Brompton etc. Waterworks* (1861), 1 B. & S. 675).

the plaintiff within six days after the summons in the action has been served on such justice, and the effect of the notice is to render all the proceedings in the county court null and void (*p*). The defendant, however, cannot, after having given such notice, obtain a *certiorari* to remove the case into the High Court (*q*).

SUB-SECT. 4.—*Set-off and Counterclaim.*

Right of set-off and counterclaim.

1110. A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim has the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim (*r*).

Misjoinder of plaintiff.

1111. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff a defendant who has set up a set-off or counterclaim may obtain the benefit thereof by establishing the same as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon (*s*).

Notice.

1112. Notice of a set-off or counterclaim is necessary, as in the case and according to the provisions applicable to notice of special defences, and must contain particulars of such set-off or counterclaim (*t*). Where a plaintiff intends to rely on a special defence to a counterclaim he must give notice exactly in accordance with the provisions applicable to notice of special defences (*a*), except that the provision as to time for giving notice does not apply unless the plaintiff after receipt of notice of counterclaim might, if he had used reasonable expedition, have filed his notice five clear days before the return day (*b*).

Addition of parties.

1113. Where the counterclaim involves another person in addition to the plaintiff, the defendant may apply to add the name of such person as party to the counterclaim as the general provisions as to addition of parties apply in such a case (*c*).

SECT. 6.—*Contribution and Indemnity.*

Claim for contribution or indemnity.

1114. A defendant who claims to be entitled to contribution or indemnity against any person not a party to the action,

(*p*) Justices Protection Act, 1844 (11 & 12 Vict. c. 44), s. 10. No special form of notice is provided by the County Court Rules. For form of ordinary notice of objection to the jurisdiction, see County Court Rules, Appendix, Form 79.

(*q*) *Weston* v. *Sneyd* (1857), 1 H. & N. 703.

(*r*) County Court Rules, Ord. 10, r. 2. As to the jurisdiction of the county court in counterclaims, see p. 433, *ante*. As to the distinction between set-off and counterclaim, and generally as to the law on this subject, see title PRACTICE AND PROCEDURE.

(*s*) Ord. 10, r. 8.

(*t*) *Ibid.*, rr. 10, 11; and see p. 485, *ante*. As to particulars, see p. 466, *ante*. For form of counterclaim, see County Court Rules, Appendix, Form 84.

(*a*) See p. 485, *ante*.

(*b*) Ord. 10, r. 21.

(*c*) *Ibid.*, r. 22. As to adding parties, see p. 509, *post*.

SECT. 6. Contribution and Indemnity.

must, five clear days at least before the return day, file a notice of his claim, according to the prescribed form, and the registrar must seal such notice and deliver it to the defendant, who must forthwith serve the same, together with a copy of the summons on the plaint and of the particulars annexed thereto, on the person against whom such claim is made, according to the provisions relating to the service of default summonses (*d*).

Claim where notice of defence or leave to defend necessary.

Where the original action has been commenced by default summons, the defendant is not entitled to serve such a notice before he gives notice of intention to defend, or, if the plaint is entered under the Summary Procedure on Bills of Exchange Act, 1855 (*e*), before he obtains leave to defend; and where after notice of intention to defend or leave to defend has been given the defendant files such a notice, the registrar must on the filing thereof seal and deliver to the defendant a duplicate of the notice of the day on which the action will be tried, and the defendant must serve the same with the notice of his claim (*f*).

Claim where leave would be necessary to enter plaint against third party.

Where, if the defendant desired to enter a plaint and issue a summons against the person from whom he claims to be entitled to contribution or indemnity, leave to enter the plaint would be required (*g*), the defendant is not entitled to serve such a notice without leave of the court, to be obtained in the manner in which leave to enter a plaint is obtained (*h*).

Third party disputing plaintiff's claim.

1115. Any third party served with a notice who desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, must appear at the court on the return day, and in default of his so doing he is deemed to admit the validity of the judgment obtained against such defendant (whether obtained by consent or otherwise), and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the said notice. If it appears to the court that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the court may adjourn the proceedings against the third party, or the original action and the proceedings against the third party, on such terms, as to costs and otherwise, as may be just (*i*).

Default of appearance by third party.

1116. Where a third party fails to appear on the return day, (1) if judgment in the original action is given in favour of the plaintiff on default of appearance by the defendant, the

(*d*) County Court Rules, Ord. 11, r. 1 (1). The time required in actions under the extended jurisdiction is ten clear days (County Court Rules, Ord. 22A, r. 14). For form of notice, see County Court Rules, Appendix, Form 88. As to service of a default summons, see p. 473, *ante*. As to the general principles of contribution and indemnity, see title PRACTICE AND PROCEDURE.

(*e*) 18 & 19 Vict. c. 67; and see p. 479, *ante*.

(*f*) County Court Rules, Ord. 11, r. 1 (2).

(*g*) Under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74; see p. 450, *ante*.

(*h*) County Court Rules, Ord. 11, r. 1 (3).

(*i*) *Ibid.*, r. 2.

defendant may at any time after satisfaction of the judgment against himself, or before such satisfaction, by leave of the court apply to the judge to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice, and the judge may enter judgment accordingly; or (2) if the original action is tried, and results in favour of the plaintiff, the judge may, on the application of the defendant, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party; provided that execution thereon must not be issued without leave of the judge until after satisfaction by such defendant of the judgment against him; or (3) if the original action is finally decided in favour of the plaintiff otherwise than by trial, the judge may, on application by the defendant, order such judgment as the nature of the case may require to be entered for the defendant giving the third party notice against the third party, at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him. Any judgment so entered may be set aside or varied upon terms (*k*).

Application for directions.

1117. Any third party, or the defendant in the action, may apply at or before the trial to the judge for directions, and the judge, upon the hearing of the application, may give directions accordingly (*l*).

Claim for contribution or indemnity against co-defendant.

1118. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure must thereupon be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but this provision does not prejudice the rights of the plaintiff against any defendant in the action. Leave of the court is not required for the issue of a notice to be served on a person who is already a defendant to the action (*m*).

SECT. 7.—*Payment into and out of Court.*

SUB-SECT. 1.—*In General.*

Payment into court by defendant.

1119. A defendant in any action or matter may pay into court such sum of money as he thinks a full satisfaction of the plaintiff's claim, together with the costs incurred by the plaintiff up to the time of such payment, and the plaintiff may elect to accept the same or proceed with the action (*n*). Money may be paid into court in a remitted action (*o*), in an action of detinue (*p*), and to abide the event of an action, in which latter case it is protected from the date

(*k*) County Court Rules, Ord. 11, r. 3.
(*l*) *Ibid.*, r. 4.
(*m*) *Ibid.*, r. 6.
(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 107. As to the general law on payment into court, see title PRACTICE AND PROCEDURE.
(*o*) *Bennett* v. *Drake* (1907), 23 T. L. R. 533.
(*p*) *Crossfield* v. *Such* (1852), 8 Exch. 159.

SECT. 7. Payment into and out of Court.

of payment in (*q*). Payment into court must be made five clear days at least before the return day, and every such payment is to admit *pro tanto* the claim or cause of action or complaint in respect of which the payment is made, unless the defendant at the time of paying the money into court files with the registrar a notice according to the prescribed form, stating his name and address, and further stating that, notwithstanding such payment, the defendant denies his liability; but no such payment with a denial of liability is permitted in any action or counterclaim for libel or slander. The defendant must also pay into court, in respect of the court fees and solicitor's costs (if any) entered on the summons, a sum proportionate to the amount paid in in respect of the claim, unless the payment into court is made under a defence of tender (*r*), in which case he may make such payment without costs (*s*). Where the amount claimed in the action exceeds £50, payment must be made ten clear days before the return day (*t*).

How payment into court made.

Notice to plaintiff.

1120. Within twenty-four hours of payment the registrar must send notice thereof to the plaintiff, and if the payment is made with denial of liability, the necessary notice to that effect (*u*).

Payment into court after prescribed time.

1121. The defendant may also at any time less than five clear days before the return day pay money into court, and notice thereof must be given by the registrar to the plaintiff, but the defendant is not permitted, except by leave of the court, to give a notice denying liability at the time of such payment. Where money is paid into court less than five clear days before the return day, or where it is in any case paid in without costs, if the plaintiff does not elect to accept the money so paid in satisfaction, he may proceed as if no such payment had been made, and, unless the court otherwise orders, he is entitled to costs on such sum as he may recover, whether such sum be less than the sum paid into court or not (*b*).

Acceptance by plaintiff.

1122. If the plaintiff elects to accept, in satisfaction of his claim, the money paid into court by the defendant, whether the same has been paid in in due time or not, or with or without costs, or with or without a notice of denial of liability, he must send to the registrar and to the defendant by post, or leave at the registrar's office and at the defendant's dwelling or place of business, a written notice according to the prescribed form stating such acceptance, within such reasonable time before the return day as the time of payment by the defendant has permitted, and thereupon the action abates, except as herein provided, and the plaintiff is not liable to any costs incurred by the defendant after receiving such notice (*c*).

(*q*) *Tomlinson* v. *Hampson* (1894), 38 Sol. Jo. 401.

(*r*) See p. 487, *ante*; and note (*k*), p. 496, *post*.

(*s*) County Court Rules, Ord. 9, r. 12 (1); and see County Court Rules, Appendix, Form 75.

(*t*) County Court Rules, Ord. 22A, r. 10.

(*u*) County Court Rules, Ord. 9, r. 12 (2); Ord. 9, r. 14; and see County Court Rules, Appendix, Forms 73, 74.

(*b*) *Ibid.*, r. 12 (3), (4). As to costs generally on payment into court, see p. 593, *post*.

(*c*) *Ibid.*, r. 13 (1), (2). For form of notice, see County Court Rules, Appendix, Form 76.

The court may award the plaintiff costs beyond those paid into court which have been properly incurred before the receipt of the notice and in attending the court to apply for the same (*d*).

If the plaintiff intends to apply for such costs, he must give notice of that intention in his notice of acceptance of the sum paid in, or where the time of payment into court by the defendant does not permit of notice of acceptance being given, the plaintiff may apply for such costs without giving such notice. Where the plaintiff has not given notice of acceptance, he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the defendant since the date of payment into court, and which may be allowed by the court. In default of acceptance by the plaintiff the action may proceed (*e*).

Application for costs.

1123. The above-named provisions apply in a case where a defendant in a remitted action of libel pays money into court in accordance with the Libel Act, 1843 (*f*).

Libel action.

1124. Where a notice of defence to a default summons has been given, and the defendant, before notice of the day fixed by the registrar for the trial has been sent to the plaintiff, pays into court the amount or a portion of the amount claimed, together with a sum in respect of the court fees and solicitor's costs (if any) entered on the summons proportionate to the amount paid in in respect of the claim, he is not liable to any further costs if the plaintiff accepts the money paid in in satisfaction of his claim. Where payment into court is made after notice of trial has been so sent, the above-named provisions apply (*g*).

Payment into court where notice of defence to default summons given.

1125. A plaintiff may, in answer to a counterclaim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant (*h*).

Payment into court in answer to a counterclaim.

1126. Where a defendant pays into court any sum admitted by him to be due, after deducting any amount claimed by him as a set-off or counterclaim, he must pay into court in respect of the court fees and solicitor's costs (if any) entered on the summons a sum proportionate to the amount paid in, in respect of the plaintiff's claim (*i*).

Addition of court fees and costs.

1127. Where a defendant pays money into court under a defence of tender, the plaintiff may accept the same in satisfaction of his claim, but he is not entitled to take out of court the amount so accepted, nor to any costs, without the order of the court; and the court may make such order as may be just as to the costs

Payment under defence of tender.

(*d*) County Court Rules, Ord. 9, r. 13 (3).
(*e*) *Ibid.*, r. 13 (4), (5), (6).
(*f*) 6 & 7 Vict. c. 96, s. 2, not repealed as to inferior courts by Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19); County Court Rules, Ord. 9, r. 14.
(*g*) County Court Rules, Ord. 9, r. 15.
(*h*) *Ibid.*, r. 16.
(*i*) *Ibid.*, r. 17.

SECT. 7. **Payment into and out of Court.**

of either party, and may order any costs awarded to the defendant to be deducted from such amount and paid to the defendant (*k*).

Payment in of less sum than claim denying liability.

1128. Where a defendant pays into court a sum less than the sum claimed, with a notice of denial of liability, and the plaintiff does not accept the same in satisfaction of his claim, the money must not be paid out until after the trial and judgment. If the plaintiff recovers less than the amount paid into court, the balance of such amount must be repaid to the defendant, unless the court otherwise orders, and the court may order any costs awarded to the defendant to be set off against the amount recovered by the plaintiff, and if the defendant succeeds, the whole amount paid into court must be repaid to him, unless the court otherwise orders (*l*).

Payment to plaintiff.

1129. Where money is paid to the plaintiff instead of being paid into court, the plaintiff, if he accepts the same in satisfaction of his claim, must send notice of such acceptance to the registrar and the defendant, and the action abates, and the plaintiff is not liable to any costs incurred by the defendant after receiving such notice (*m*). Where the plaintiff has not given notice of acceptance he may nevertheless accept the money paid to him at any time before the case is called on and opened, subject to the payment of any costs reasonably incurred by the defendant since the date of payment which may be allowed by the court (*n*).

Default of acceptance.

In default of acceptance the action may proceed, and if the action proceeds, the sum paid to the plaintiff must be included for the purpose of calculating the amount on which the hearing fee and any costs allowed to the plaintiff are to be charged; but if the plaintiff recovers more than the sum so paid, judgment must be entered only for the additional amount recovered and for the fees and costs so allowed to the plaintiff: and if the plaintiff recovers no more than the sum so paid, the judge may order him to pay to the defendant the costs incurred by him after such payment (*o*).

Equitable actions.

1130. Where a party is directed to pay money into court in any action or matter commenced under the equitable jurisdiction of the court, he must attend and pay the same into the registrar's office, and obtain a receipt for the amount, and the registrar unless otherwise ordered by the judge must pay the money into the post office savings bank (*p*).

Executor or administrator.

1131. A defendant sued as executor or administrator who admits his representative capacity and the plaintiff's claim, must pay into court the sum with which he is chargeable as assets, in accordance with the general provisions stated above (*q*).

(*k*) County Court Rules, Ord. 9, r. 18. As to the defence of tender, see p. 487, *ante*.

(*l*) *Ibid.*, r. 19.

(*m*) *Ibid.*, r. 20 (1), (2).

(*n*) *Ibid.*, r. 20 (5).

(*o*) County Court Rules, Ord. 9, r. 20 (6), (7). As to payment into court under a judgment or order, see p. 539, *post*.

(*p*) County Court Rules, Ord. 37, r. 1. As to payment into the bank, see p. 497, *post*.

(*q*) County Court Rules, Ord. 30, r. 11.

SUB-SECT. 2.—*Payment out of Court.*

SECT. 7. Payment into and out of Court.

1132. Money paid into court, whether under a judgment or order or otherwise, must be paid out to plaintiffs on production of the plaint, note, or duplicate thereof, and to defendants on production of the summons or duplicate thereof, money paid into court by a plaintiff in answer to a counterclaim must be paid out on proof to the satisfaction of the registrar, that the person applying is entitled or authorised to receive the same (*r*). Where a successful plaintiff applies for payment out of court of money paid in, in satisfaction of a judgment, the trustee in bankruptcy of the defendant cannot at the hearing of the application claim the money on behalf of the bankrupt's estate (*s*).

Mode of payment out of court.

SUB-SECT. 3.—*Payment into Court in Cases of Infants and Lunatics.*

1133. In any action or matter in which a sum of money has been awarded to or recovered by an infant or person of unsound mind not so found by inquisition, the judge may at or after the trial, order that the whole or any part of such sum be paid into court to the credit of an account intituled in the action or matter; and any sum so paid into court may either be invested or be paid from time to time out of court to such person as the judge may direct to be held and applied for the benefit of such infant or person of unsound mind, in such manner as the judge may from time to time direct (*a*).

Infants and lunatics.

When any moneys have been so paid into court or invested pursuant to the order of the judge, it is not necessary that applications in regard to them shall be made by petition; any person interested may apply in person to the judge, and he, on such evidence of right and identity as he may think necessary, may make such order as he may think fit (*b*).

Applications with regard to funds.

SUB-SECT 4.—*Payment in, Transfer and Investment by Trustees and Others.*

1134. Any moneys, annuities, stocks, or securities vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of the Trustees Relief Acts, where the same do not exceed in amount or value the sum of £500, may be

Trustees paying trust moneys etc. into county court.

(*r*) County Court Rules, Ord. 9, r. 21. As to duplicate plaint note, see p. 461, *ante*. A lost summons may be replaced by a duplicate; see p. 621, *post*. The registrar must allow searches to be made as to payment out of money in court on three days at least in each week, excepting one week in which accounts are made up for the Treasury (County Court Rules, Ord. 2, r. 10). Money paid into a foreign court, except in the metropolitan courts, must be transmitted to the home court (County Court Rules, Ord. 9, r. 22). As to home and foreign courts, see pp. 468, 472, *ante*.

(*s*) *London Fancy Box Co., Ltd.* v. *Berkeley* (1906), 95 L. T. 727. "I think that the remedy of the trustee is by action or motion in bankruptcy" (*ibid.*, *per* Lord ALVERSTONE, C.J., at p. 728).

(*a*) County Court Rules, Ord. 9, r. 24. The same provisions as to investment as in the case of trust money (see p. 499, *post*) apply in the case of infants and lunatics (County Courts (Investment) Act, 1900 (63 & 64 Vict. c. 47), s. 1). See generally titles INFANTS AND CHILDREN; LUNATICS AND PERSONS OF UNSOUND MIND; PRACTICE AND PROCEDURE. As to investment of money recovered under the Employers' Liability and Workmen's Compensation Acts, see title MASTER AND SERVANT.

(*b*) *Ibid.*, r. 25.

SECT. 7. Payment into and out of Court.

paid into court. The power given to trustees by the Trustee Act, 1893, to pay trust monies into the High Court extends to the county court where the amount of the trust fund does not exceed £500 (*c*).

Affidavit by person paying in.

1135. Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any court (*d*), must file with the registrar an affidavit according to the prescribed form, intituled in the matter of the Act, and of the particular trust (*e*).

Retention of sum for costs.

1136. Where it is desired to retain any sum of money for costs incurred in the payment of money into court, or in any matter connected with the trust prior to such payment, a bill of costs must be filed and such sum only may be retained as may be allowed by the registrar on taxation (*f*).

Documents for registrar.

1137. Probate of the will, or the original instrument or document, or such evidence as the registrar may require as to the instrument creating the trust, must be left with the registrar for such period as he may reasonably require (*g*).

Indorsement of day of filing on affidavit.

1138. Immediately on the receipt by the registrar of the affidavit he must indorse thereon a memorandum of the day on which the same was filed; and when such affidavit has been so indorsed, it must be taken for all purposes to have been duly filed on the date so indorsed thereon (*h*).

Registrar to examine evidence.

The registrar must compare the statements in the affidavit with the probate or other instrument deposited with him, and must indorse on the affidavit a memorandum that he has made such comparison, and must add to such indorsement any memorandum as to any matters which may be omitted in the affidavit and which he may think material (*i*).

Application for certificate.

1139. The persons filing the affidavit, or any of them, may apply to the registrar to give to them a certificate intituled in the matter of the Act and of the particular trust, and under the seal of the court, certifying that the affidavit has been filed, and such certificate may be according to one or other of the prescribed forms, with

(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 67, 70; and see pp. 691 *et seq.*, *post*.

(*d*) Under the County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 67 (5); and the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 42, both of which deal with payment into court by masters.

(*e*) County Court Rules, Ord. 38, rr. 9, 10. The affidavit must contain (1) his own name, address, and description; (2) the place where he is to be served with any petition or summons, or any notice of any proceeding or order of the court relating to the trust fund; (3) the amount which he proposes to pay, transfer or deposit in trust to attend the orders of the court; (4) a short description of the trust, or of the nature and contents of the instrument creating it; (5) the names, addresses, and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to the fund; (6) the submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred or security deposited. For form of affidavit, see County Court Rules, Appendix, Form 333.

(*f*) County Court Rules, Ord. 38, r. 11.

(*g*) *Ibid.*, r. 12.

(*h*) *Ibid.*, r. 13.

(*i*) *Ibid.*, r. 14.

SECT. 7. Payment into and out of Court.

such variations as each particular case may require (*k*). In the case of money, the persons filing the affidavit, or any of them, may upon the receipt of the certificate pay the money into a post office savings bank (*l*), and obtain from the officer of the bank a receipt for the same, and must forthwith leave the receipt with the registrar, who must immediately indorse thereon a memorandum of the day on which the same was received by him; and when such receipt has been so indorsed, it is taken for all purposes to have been duly recorded on the date so indorsed thereon (*m*).

SUB-SECT. 5.—*Investment and Payment out of Funds.*

Investment of money paid into court in equity proceedings.

1140. Any money paid into court in the actions or matters arising under the equitable jurisdiction of the county court must, unless otherwise ordered by the judge, be invested by the registrar in his name as registrar, within forty-eight hours of its payment into court, in a post office savings bank established in the town in which the court is held, without restriction as to amount, and without the declaration required of a depositor in a savings bank; and no part of any money invested in a post office savings bank under this Act may be paid to any registrar except upon an authority addressed to the Postmaster-General by the Treasury (*n*).

Receipt and re-investment of dividends by registrar.

1141. Where money has before the first day of January, 1868, been invested in stocks, and the investment is in the names of the treasurer and registrar alone, the registrar must from time to time receive the dividends of all the funds so standing in their names, and must re-invest the dividend in the same names, except where and so far as the court otherwise directs, and must apportion the amount so re-invested in his books to the same accounts as the original investments (*o*).

Examination of married woman interested in fund.

1142. Where any married woman is interested in any principal money, stocks, shares, or securities exceeding in value £200 or £10 in annual payments, and is not entitled to the same as her separate property, she may be examined by the judge apart from her husband to ascertain whether the same shall be paid to him or made the subject-matter of a settlement: and if the judge thinks that a settlement should be made, and in all cases where

(*k*) County Court Rules, Ord. 38, r. 15. For forms of certificate, see County Court Rules, Appendix, Forms 334, 335.

(*l*) See note (*n*), *infra*.

(*m*) County Court Rules, Ord. 38, r. 16. As to transfer of stock, deposit of security, and entry of either, see *ibid.*, rr. 17—22, and County Court Rules, Appendix, Forms 336—339.

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 71; County Court Rules, Ord. 37, rr. 2, 3. For form of letter to the Treasury, see County Court Rules, Appendix, Form 343. Any person deriving any benefit under any moneys paid into a post office savings bank under the provisions of the County Courts Act may nevertheless open an account in a post office savings bank, or in any other savings bank, in his own name, without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 71).

(*o*) County Court Rules, Ord. 37, r. 4.

SECT. 7. Payment into and out of Court.

the married woman is under age, the judge must by his judgment make such settlement accordingly, provided always, that the judge may, if he thinks fit, order such settlement to be prepared by counsel and settled by the judge (*p*).

Payment from estate of deceased person.

1143. Where in any action, matter, or proceeding the estate of a deceased person who has died intestate is entitled to a fund or to a share of a fund in court not exceeding £100, and it is proved to the satisfaction of the judge that no administration has been taken out to such deceased person, and that his assets do not exceed the value of £100, including the amount of the fund or share to which the estate of such deceased person is entitled, the judge may direct that such fund or share shall be paid, transferred, or delivered to the person who, being a widower, widow, child, father, mother, brother, or sister of the deceased, would be entitled to take out administration to the estate (*a*).

Payment of estate duty.

Where estate duty is payable on a fund the same must be paid before the execution of any order directing the payment or transfer of the fund, and the registrar must, before making the payment, require a certificate from the proper officer or the production of the receipt for such duty (*b*).

SECT. 8.—*Discontinuance, Confession and Admissions.*

SUB-SECT. 1.—*Discontinuance.*

Discontinuance.

1144. If the plaintiff desires to discontinue any action or matter against all or any of the parties thereto, he must give notice in writing by post or otherwise thereof to the registrar and to every party as to whom he so desires to discontinue; and after the receipt of such notice any such party may apply *ex parte* for an order against the plaintiff for the costs incurred before the receipt of such notice, and for the costs of attending the court to obtain the order; but a discontinuance under this provision is not a defence to any subsequent action, though a subsequent action may be stayed by the judge until the costs of the discontinued action have been paid (*c*).

SUB-SECT. 2.—*Confession and Admissions.*

Confession or admission of debt.

1145. Any person against whom a plaint has been entered in any court may, if he think fit, whether he be summoned upon such plaint or not, in the presence of any registrar, registrar's clerk, or solicitor, sign a statement confessing and admitting the amount of the debt or demand, or part of the amount of the debt or demand, for which such plaint has been entered. The registrar of the court in which the plaint was entered, must send notice thereof to the plaintiff, and thereupon the said plaintiff need not prove the debt or demand so confessed and admitted as aforesaid; but the court

(*p*) County Court Rules, Ord. 37, r. 5.

(*a*) *Ibid.*, r. 6.

(*b*) County Court Rules, Ord. 2, r. 14. As to estate duty, see title DEATH DUTIES.

(*c*) County Court Rules, Ord. 9, r. 1. As to the general principles of discontinuance of actions, see title PRACTICE AND PROCEDURE. As to forms of notice and order for costs, see County Court Rules, Appendix, Forms 63, 64.

at the next sitting thereof, must, upon proof by affidavit of the signature of the party, enter up judgment for the debt or demand so confessed and admitted (*d*). The registrar can only enter judgment in such a case where the admission is made by the party himself, and not where it is made by an agent of the party (*e*). Such confession must be delivered to the registrar at least five clear days, or where the claim exceeds £50, at least ten clear days, before the return day; but at any time before the action is called on the defendant may make a confession or admission subject to a liability for the plaintiff's costs incurred by reason of his not having delivered a confession before the above-named period (*f*). Where a defendant does not appear personally, or by solicitor or agent, in the absence of the foregoing confession the judge or registrar may accept as an admission of the claim or any part thereof, any letter addressed to the judge or registrar containing the admission and purporting to be written by, or on behalf of, the defendant (*g*).

Agreement as to amount of debt and payment.

1146. If the defendant can agree with the plaintiff upon the amount of the debt or demand in respect of which the plaint has been entered, and upon the terms and conditions upon which the same shall be paid and satisfied, they may sign a statement of such agreement, and the registrar must receive the same and enter up judgment for the plaintiff accordingly (*h*). In such a case the defendant may confess the amount of the plaintiff's costs besides the court fees; and in the judgment so entered the costs must be stated separately (*i*).

Admission of truth of plaintiff's statement.

1147. Where a defendant desires to admit the truth of the statements in the plaintiff's particulars, and to submit to the judgment of the court thereon, he may sign an admission according to the prescribed form. The signature of the defendant thereto must be verified by affidavit unless the admission is signed in the presence of a registrar or of a clerk to a registrar. Such admission must be filed five clear days, or where the amount claimed exceeds £50, ten clear days at least before the return day, and the registrar must transmit a notice thereof by post to the plaintiff; and the plaintiff is not, unless the judge otherwise orders, allowed any costs incurred after the service upon him of notice of such admission in relation to the proof of the matter so admitted, but the plaintiff is entitled, notwithstanding such admission, to his costs of attending on the day of trial to enter up judgment and tax his costs (*j*).

(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 98.
(*e*) *R.* v. *Mulligan* (*Judge*) (1909), 25 T. L. R. 341.
(*f*) County Court Rules, Ord. 9, r. 2; Ord. 22A, r. 8. For forms of admission of claim, see County Court Rules, Appendix, Forms 65—68.
(*g*) County Court Rules, Ord. 9, r. 3.
(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 99; and see County Court Rules Appendix, Forms 69, 70. The principle decided in *R.* v. *Mulligan* (*Judge*), *supra*, applies in such cases.
(*i*) County Court Rules, Ord. 9, r. 4.
(*j*) *Ibid.*, r. 5; Ord. 22A, r. 8. For form of admission and affidavit, see County Court Rules, Appendix, Forms 71, 72.

SECT. 8. Discontinuance, Confession and Admissions.

Confession by defendant in action of ejectment or for recovery of possession.

1148. A defendant in an action of ejectment or for the recovery of possession of a tenement may at any time before the return day confess the action as to the whole or any part of the land by signing in the presence of any registrar, or of a clerk to a registrar, or of a solicitor, an admission of the title of the plaintiff to the land or such part thereof, and of his right to the possession thereof, which admission must be attested by the person in whose presence it is signed. The registrar must upon the receipt of such admission forthwith give notice thereof by post to the plaintiff; and the court may on the return day, upon proof of the signature of the defendant to such admission, and without any further proof of the plaintiff's title (if no defendant other than the defendant signing such admission defends for the said land or such part thereof), give judgment for the plaintiff for the recovery of possession, and for costs. If the plaintiff receives notice of such admission before the return day, he is not entitled as against any defendant signing to any costs incurred subsequently to the receipt of such notice, except the costs of attending the court on the return day, unless the court otherwise orders. Where the admission is not signed by all the defendants defending for the said land or such part thereof, the action must proceed against all the defendants who have not signed as if no admission had been signed (*k*).

Admission by any party.

1149. Any party to an action or matter may give notice in writing to any other party that he admits the truth of the whole or any part of the case or claim of such other party, and no costs incurred after the receipt of such notice in respect of the proof of any matters admitted therein may be allowed; but the costs of any steps taken prior to the receipt of such notice may be allowed, if the registrar on taxation is of opinion that they were not taken unnecessarily or prematurely (*l*). Any admission under this provision must be clear and clean, so as to dispense with any further proof (*m*).

Notice to admit facts.

1150. Any party may by notice in writing according to the prescribed form, at any time not later than six clear days before the return day, call on any other party to admit, for the purposes of the action, matter, or issue only, any specific fact or facts mentioned in such notice. In case of refusal or neglect to admit the same by the delivery of a written admission of the fact or facts as aforesaid not less than three clear days before the return day, the costs of proving such fact or facts must be paid by the party so neglecting or refusing, whatever the result of the action, matter, or issue may be, unless at the trial the court certifies that the refusal to admit was reasonable, or unless the court at any time otherwise orders. Any admission made in pursuance of such notice is deemed to be made only for the purposes of the particular action, matter, or issue, and not as an admission to be used against the party on

(*k*) County Court Rules, Ord. 9, r. 7. For forms of admission and judgment, see County Court Rules, Appendix, Forms 256, 274, 275.

(*l*) *Ibid.*, r. 6; and see County Court Rules, Appendix, Form 71.

(*m*) *Pincott* v. *Letts* (1897), 77 L. T. 160.

any other occasion or in favour of any person other than the party giving notice, and the court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just (*n*). Where the amount claimed exceeds £50 the notices required are twelve and six clear days respectively (*o*).

Evidence of admissions.

1151. In all cases of admissions an affidavit of the solicitor or his clerk is sufficient evidence, where necessary, of such admissions (*p*).

SECT. 9.—*Interlocutory Applications and Orders.*

SUB-SECT. 1.—*Special Applications.*

Order for preservation or custody.

1152. When by any contract a *primâ facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured (*q*).

Order for sale of perishable goods.

1153. The court may, upon the application of any party to any action or matter, make any order for the sale by any person named in such order, and in such manner and on such terms as the court may think desirable, of any goods, wares or merchandise which may be of a perishable nature or likely to injure from keeping, or which incur charges for food or keep, or which for any other just and sufficient reason it may be desirable to have sold at once (*r*).

Superintendence of high bailiff.

Where any personal property is directed to be sold by auction, detained, or preserved, the high bailiff must, if the court so direct, superintend such sale, detention or preservation; and where the property is to be sold by private contract, he shall carry out the directions of the court in respect of such sale (*s*).

Order for detention, preservation etc.

1154. The court may upon the application of any party to an action or matter, and upon such terms as may be just, make any order for the detention, preservation, inspection, surveying, measuring, or weighing of any property or thing, being the subject of such action or matter, or as to which any question may arise therein, and may for all or any of the purposes aforesaid authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and authorise any samples to be taken, or any observation, plan, or model to be made or experiment to be tried, which may be necessary or expedient for the

(*n*) County Court Rules, Ord. 9, r. 8. For forms of notice and admission, see County Court Rules, Appendix, Forms 113, 114.

(*o*) County Court Rules, Ord. 22A, r. 9.

(*p*) County Court Rules, Ord. 9, r. 9.

(*q*) County Court Rules, Ord. 12, r. 1. The principles governing interlocutory orders are in the High Court and county court identical, and the necessary authorities should be sought for in title PRACTICE AND PROCEDURE. For the jurisdiction of the county court in interlocutory matters, see p. 432, *ante*.

(*r*) *Ibid.*, r. 2.

(*s*) County Court Rules, Ord. 2, r. 38.

SECT. 9. Interlocutory Applications and Orders.

purpose of obtaining full information or evidence (*t*). Where a warrant directs the high bailiff to detain and preserve any goods or chattels, he must take and retain possession thereof until further order be made by the court thereon (*a*).

Evidence in order for inspection, measuring etc.

Where an order is made for inspecting, surveying, measuring, weighing, or making any experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the registrar or some other person to be named therein to examine upon oath and take the deposition of the person so named as to such measure, weight, or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or either party to give the deposition so taken in evidence upon any trial or proceeding (*b*).

Order for accounts and inquiries.

1155. At any stage of the proceedings the judge may direct any necessary inquiries or accounts to be made or taken, notwithstanding that there may appear to be some special relief sought or issue to be tried as to which the action should proceed in the ordinary manner (*c*).

Order where lien is claimed on specific property.

1156. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the judge, upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the judge may direct, and that upon such payment into court being made the property be given up to the party seeking to recover it (*d*)

Injunction.

1157. An injunction to restrain the defendant or respondent from the repetition or continuance of a wrongful act or breach of contract, or from the commission of the same, may be applied for to the judge at any time before or after judgment (*e*).

Where an immediate order is required for an injunction, receiver, or accounts and inquiries, application for the same may be filed and made to the judge in or out of court on affidavits setting forth the facts rendering the order immediately necessary, and the judge may make the order on such terms as he may think fit (*f*).

(*t*) County Court Rules, Ord. 12, r. 3.
(*a*) County Court Rules, Ord. 2, r. 39.
(*b*) County Court Rules, Ord. 12, r. 4.
(*c*) *Ibid.*, r. 5. As to the method of taking accounts and making inquiries, see p. 540, *post*.
(*d*) County Court Rules, Ord. 12, r. 7.
(*e*) County Court Rules, Ord. 22, r. 16.
(*f*) County Court Rules, Ord. 12, r. 6; and see County Court Rules, Appendix, Forms 344, 345.

SECT. 9. Interlocutory Applications and Orders.

1158. A defendant who resides more than twenty miles from the court may, on affidavit disclosing a good defence, apply not later than five clear days before the hearing that the plaintiff be ordered to give security for costs (*g*). No appeal lies to the judge from the registrar's order under this provision (*h*).

Settlement of draft order.

1159. The draft of any order in the case of special applications (*i*) must be prepared beforehand by the party making the application, and be settled by the registrar (*j*).

SUB-SECT. 2.—*Receiver.*

Application for receiver.

1160. An application for a receiver may be made before, at, or after the trial of an action, and a receiver may likewise be appointed whether the judge thinks it expedient whether the appointment has been asked for in the plaint or not (*k*).

Security by receiver.

1161. Every receiver appointed by the judge, other than the high bailiff, must, unless the judge otherwise orders, give such security to the registrar for the faithful discharge of his duties, and the payment over of money, as the judge directs (*l*), and must, unless otherwise ordered, be allowed a proper salary or allowance (*m*).

Receiver's accounts.

1162. The receiver must submit his accounts to the registrar, and the registrar must audit the same, as soon as conveniently may be after the realisation of the assets, and immediately after such audit the receiver must pay over to the registrar the balance found thereby to be in his hands. The account must be written on foolscap paper bookwise, and the items numbered consecutively, and the account must be verified by affidavit and be therein referred to as an exhibit (*n*).

The registrar may require any receiver to produce any receipt accounts, and vouchers necessary for verifying the account, and may disallow any item not proved to his satisfaction (*o*).

Audit of receiver's accounts.

The receiver must, at any time before the complete realisation of the assets, produce his accounts to be audited upon receiving seven days' notice in writing from the registrar so to do, and such notice may be sent by post or otherwise to the address of the receiver (*p*).

(*g*) County Court Rules, Ord. 12, r. 9, and see p. 600, *post*.
(*h*) *Porter* v. *London and Manchester Insurance Co.*, [1909] 2 K. B. 30.
(*i*) See the preceding paragraphs.
(*j*) County Court Rules, Ord. 12, r. 8.
(*k*) County Court Rules, Ord. 13, r. 1; and see generally, title RECEIVERS. For forms of interim and final orders appointing a receiver, see County Court Rules, Appendix, Forms 300A and 300B, which may be used also where the receiver is appointed by way of equitable execution. As to the appointment of a receiver by way of equitable execution, see p. 550, *post*.
(*l*) County Court Rules, Ord. 13, r. 2.
(*m*) *Ibid.*, r. 3.
(*n*) *Ibid.*, r. 4.
(*o*) *Ibid.*, r. 5.
(*p*) *Ibid.*, r. 6. For form of notice, see County Court Rules, Appendix, Form 301.

SECT. 9. Interlocutory Applications and Orders.

Where the duties of a receiver are continuous, no longer period than one year must in any case be allowed to intervene between each audit (*q*).

The registrar must, after each audit, make and sign a certificate stating the result of the audit (*r*), but in no case is it necessary for any party to attend at the audit; where a party is dissatisfied with the account he may apply to the judge for a revision of the registrar's allowances (*s*).

Payment over of income to person interested.

1163. The judge may order the receiver to pay over, at such time, or from time to time as he may think fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, any yearly or other accruing rents or interest, instead of paying the same into court, and to take credit for such payments in his accounts when audited (*t*).

Penalty for neglect by receiver.

1164. With respect to any receiver who neglects to submit his accounts to be audited or to pay over any balance in his hands, the judge may from time to time, when his subsequent accounts are produced to be audited, disallow the salary or allowance therein claimed by such receiver, and may also, if he thinks fit, charge him with interest at the rate of 5 per cent. per annum upon any balance so neglected to be paid by him during the time such balance appears to have remained in the hands of such receiver (*u*).

In case of any receiver failing to leave any account or affidavit, or to pass any account, or to make any payment or otherwise, the receiver or the parties, or any of them, may be required to attend before the judge to show cause why such account or affidavit has not been left, or such account passed or such payment made, or any other proper proceeding taken; and thereupon the judge may give such directions and make such orders as may be proper, including directions for the discharge of any receiver and the appointment of another, and any orders as to costs (*a*).

SUB-SECT. 3.—*Application for Directions.*

Application for directions.

1165. In any action or matter any party may at any time apply to the court for a postponement of the trial (if the day of trial has been fixed) and for general directions with respect to the following matters and proceedings, viz., particulars of claim or counterclaim, special defence, payment into court, discovery (including interrogatories), examination of witnesses before the trial, mode of trial, and any other matter or proceeding in the action or matter previous to trial. The court, if satisfied that from the nature of the action or matter the directions asked for, or some of them, are necessary, may make an order giving such directions as to all or any of such

(*q*) County Court Rules, Ord. 13, r. 7.
(*r*) *Ibid.*, r. 8.
(*s*) *Ibid.*, r. 9.
(*t*) *Ibid.*, r. 10. For form of order, see County Court Rules, Appendix, Form 302.
(*u*) *Ibid.*, r. 11.
(*a*) *Ibid.*, r. 12.

matters or proceedings as may be just, whether applied for or not, and may if necessary postpone the trial (*b*).

Application for the order must be made on at least three clear days' notice in writing to every party who may be affected thereby, which must be in the prescribed form and contain as far as possible all the matters on which directions are asked (*c*). Any party so served may, on the hearing of the application, apply for directions, and the court may make an order thereon or adjourn the consideration thereof and direct any necessary notice to be given (*d*).

Notice of application.

If upon any other application as to any of the above-mentioned matters or proceedings it appears to the court that the application is one that could and ought to have been included in the general application for directions, such application must be granted only at the costs of the party making the same (*e*).

Setting down for trial after adjournment.

1166. If the trial is adjourned generally by the order giving directions, any party may apply, on giving at least three days' notice in writing to the other party, to have the action or matter set down for trial; or, by consent of all parties, the same may be set down at any time and for any court which the state of business, in the opinion of the registrar, may allow (*f*).

Notice of setting down for trial.

Whenever an action or matter is so set down for trial the registrar must issue to the party applying to set the same down a notice according to the prescribed form (*g*). Where more than £50 is claimed the notice required is ten clear days at least (*h*).

Further directions to officers.

1167. Where the registrar, high bailiff, receiver, or any party has by any order been directed to do any act for doing which it may be found necessary to have further directions or an order of the court, the registrar must apply to the judge for such directions or order, and upon such application the judge may give such directions or make such order as he may think fit, or may appoint a time to hear all parties upon the application so made by the registrar; and if the judge makes such appointment for hearing, the same operates, as a stay of proceedings in the action until the day so appointed unless otherwise directed (*i*).

SUB-SECT. 4.—*Practice generally on Interlocutory Applications.*

Application for interlocutory order.

1168. The application for an interlocutory order (*j*) may be made either in or out of court, and either *ex parte* or on notice in writing. When made on notice, the notice must be served on the opposite

(*b*) County Court Rules, Ord. 15, r. 1. For form of order, see County Court Rules, Appendix, Form 100, which may contain necessary variations.

(*c*) County Court Rules, Ord. 15, r. 2. For form of notice, see County Court Rules, Appendix, Form 99.

(*d*) County Court Rules, Ord. 15, r. 3.

(*e*) *Ibid.*, r. 4.

(*f*) *Ibid.*, r. 5.

(*g*) *Ibid.*, r. 6. The notice must be served by the party eight clear days at least before the day fixed for trial (*ibid.*). For form of notice, see County Court Rules, Appendix, Form 101.

(*h*) County Court Rules, Ord. 22A, r. 16.

(*i*) County Court Rules, Ord. 24, r. 37.

(*j*) As to the jurisdiction of the court in interlocutory matters, see p. 432, *ante*.

SECT. 9. Interlocutory Applications and Orders.

party or his solicitor (if any) two days at least before the day of the hearing of the application, unless the judge or registrar gives leave for shorter notice. When the application may be and is made to the registrar, the registrar, if in doubt as to the proper order to be made, may refer the matter to the judge. Where the application may be and is made to the registrar, the judge may vary or rescind any order made by the registrar (*k*). No affidavit in support is necessary, unless expressly required by statute or rule, but the judge or registrar, as the case may be, may, if he thinks fit, adjourn the hearing of the application, and order affidavits in support to be filed. The order may be made absolute in the first instance, or to be absolute at any other time ordered (*l*).

Postponement of trial to complete interlocutory proceedings.

1169. Where in any action or matter interlocutory proceedings are contemplated or pending which cannot be concluded in time to enable the parties to prepare for the trial of such action or matter on the day fixed for the same, the court may, upon the application of any party, and upon being satisfied that such interlocutory proceedings are necessary and proper, make an order postponing the trial upon such terms as to costs or otherwise as may be just; and such order, if made in the absence of the other party, must be served upon him (*m*). Any application to amend parties may be made before trial to the court, or at the trial to the judge (*n*).

SECTION 10.—*Amendment.*

SUB-SECT. 1.—*Amendment in General.*

General power of judge to amend on terms.

1170. The judge may at all times amend all defects and errors in any proceeding in the court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as the judge may think just; and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties must be so made if duly applied for (*o*).

Amendment of particulars and defence without notice.

1171. A plaintiff may file and deliver amended particulars of demand, and a defendant, whether by original action, counterclaim, or otherwise, may file and deliver an amended notice or particulars of any special defence set up or intended to be set up by him (*p*) at any time before the return day without leave; but the judge at the trial, if satisfied that the opposite party has

(*k*) County Court Rules, Ord. 12, r. 11 (8); compare *Porter* v. *London and Manchester Insurance Co.*, [1909] 2 K. B. 30.

(*l*) County Court Rules, Ord. 12, r. 11. As to costs on interlocutory applications, see p. 592, *post*.

(*m*) County Court Rules, Ord. 12, r. 13.

(*n*) County Court Rules, Ord. 14, r. 10.

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 87. In *Spencer Whatley and Underwood* v. *Forster & Co.*, [1905] 1 K. B. 434, it was held that a judge could, under this provision in a remitted action, substitute a claim for unliquidated damages where the claim in the High Court had been for a liquidated sum. The registrar has the same powers of amendment in cases where the defendant does not appear, or, appearing, admits the claim (County Court Rules, Ord. 14, r. 14).

(*p*) As to special defences, see p. 485, *ante*.

not had a reasonable opportunity of preparing his case to meet any new matter introduced by such amendment, or for any sufficient cause, may disallow the amendment, or may adjourn the trial, and may make such order as to costs as he may think fit (*q*).

Abandonment of part of claim.

The plaintiff may at any time before an action or matter is called on for trial, or in opening his case when called on, abandon any part of his claim, and such abandonment must be entered on the particulars (if any), and in the minute book, provided that if the defendant succeeds, the court may allow him costs on the scale which would have been applicable to the amount originally claimed, and any costs properly incurred by him in respect of that part of the plaintiff's claim which is abandoned (*r*).

Amendment where plaintiff appears entitled to more than claim.

1172. Where upon taking an account, or by the verdict of a jury or otherwise, it appears that the plaintiff is entitled to recover an amount larger than that mentioned in the particulars, but not exceeding £100, he may by leave of the court, and on payment of the difference (if any), between the fees payable on the amount mentioned and those payable on the larger amount, amend his particulars so as to claim the larger amount, and thereupon judgment may be entered for the same (*s*).

SUB-SECT. 2.—*Amendment of Parties.*

Amendment of plaintiffs.

1173. Where an action or matter has been commenced in the name of the wrong person as plaintiff or otherwise, or where it is doubtful whether it has been commenced in the name of the right person, the court, if satisfied of a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff or otherwise, upon such terms as to notice or otherwise as may be just (*t*).

Misjoinder and non-joinder of parties.

No action or matter must be defeated by reason of the misjoinder or nonjoinder of parties, and the judge may deal with the matter in controversy so far as regards the rights and interests of the parties actually before him. The court may, at any stage of the proceedings, either upon or without the application of either party, and on terms, order that the names of parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of parties be added, whether as plaintiffs or defendants, who ought to have been joined, or whose presence before the judge may be necessary in order to enable him to adjudicate upon and settle all the questions involved. No person must be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every person whose name is so added as defendant must be served with a notice in manner hereinafter

(*q*) County Court Rules, Ord. 14, r. 12.
(*r*) *Ibid.*, r. 13. As to abandonment of excess generally, see p. 459, *ante*.
(*s*) County Court Rules, Ord. 14, r. 15.
(*t*) *Ibid.*, r. 1; and see generally, title PRACTICE AND PROCEDURE.

SECT. 10. Amendment.

mentioned, and the proceedings as against such party are deemed to have begun only on the service of such notice (*u*).

Where too few persons made plaintiffs.

Where it appears at the trial that a less number of persons have been made plaintiffs than by law required, the name of any omitted person may, at the instance of either party, be added, by order of the judge, on terms, and thereupon the action proceeds, in all respects, as if the proper persons had been originally made parties; and if such person, either at the trial or at some adjournment thereof, personally or by writing, consents to become a plaintiff, the judge may pronounce judgment as if such person had originally been made a plaintiff; but if such person does not consent to become a plaintiff, either at the trial or at the adjournment thereof, the action or matter must be struck out (*a*).

Change of defendant.

Where a person other than the defendant appears at the trial, and admits that he is the person whom the plaintiff intended to charge, or ought to have charged, his name may be substituted for that of the defendant, if the plaintiff consents; and thereupon the action proceeds, in all respects, as if such person had been originally named in the summons; and the costs of the person originally named as the defendant are in the discretion of the court (*b*).

Party wrongly suing or sued in representative character.

1174. Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right the court may, at the instance of either party, on terms, amend the proceedings; and thereupon the action proceeds, in all respects as if the proper description of the party had been given in the summons (*c*). Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, exactly similar provisions apply (*d*).

Amendment of description of plaintiff or defendant.

1175. Exactly similar provisions apply in cases where the name and description of either the plaintiff (*e*) or defendant is insufficient or incorrect (*f*).

Where all defendants are served.

1176. Where two or more persons are made defendants, and some of them have not been served, the names of those not served may, at the instance of either party, be struck out by the court, on terms; and thereupon the action proceeds, in all respects, as if the parties whose names have not been struck out had alone been made defendants; or the action may be adjourned for service upon any defendant not served (*g*).

(*u*) County Court Rules, Ord. 14, r. 2. As to service, see note (*h*), p. 511, *post*. As to applications to add or substitute parties, see p. 509, *ante*. As to misjoinder and nonjoinder of parties generally, see title PRACTICE AND PROCEDURE. For forms of notice, see County Court Rules, Appendix, Forms 94, 95. A county court judge has jurisdiction to add a co-plaintiff at the trial (*R.* v. *Clerkenwell County Court Judge* (1890), 7 T. L. R. 40).

(*a*) County Court Rules, Ord. 14, r. 3.
(*b*) *Ibid.*, r. 4.
(*c*) *Ibid.*, r. 5.
(*d*) *Ibid.*, r. 6.
(*e*) *Ibid.*, r. 7.
(*f*) *Ibid.*, r. 8
(*g*) *Ibid.*, r. 9.

1177. Where a defendant is added or substituted, except where a defendant is substituted after appearing and admitting that he is defendant, an order must be drawn up, and served on the defendant, together with a copy of the summons, and a notice according to the prescribed form as to the day upon which he is to attend at the court, according to the rules applicable to the service of the original summons in the action (*h*). Notice to added or substituted defendant.

SUB-SECT. 3.—*Change of Parties.*

1178. An action or matter does not abate by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survives or continues, and does not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*; and whether the cause of action survives or not, there is no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death (*i*). When action not to abate.

The bankruptcy of the plaintiff in any action which his trustee might maintain for the benefit of the creditors, does not cause the action to abate if the trustee elects to continue such action, and to give security for the costs thereof, within such reasonable time as the judge orders, but the hearing of the action may be adjourned until such election is made; and in case the trustee does not elect to continue the action and to give security within the time limited by the order, the defendant may avail himself of the bankruptcy as a defence (*k*). The provisions applicable to change of parties do not apply to such cases (*l*). Bankruptcy of plaintiff.

1179. Where, by reason of any event occurring after the commencement of any action or matter there arises any assignment, creation, change, transmission, or devolution of the interest, estate, or title of any plaintiff in such action or matter before judgment, the person to or upon whom such interest, estate, or title has come or devolved may give notice thereof to the registrar according to the prescribed form, with his name and address, together with an affidavit of the truth of the facts stated in such notice. Thereupon the registrar may adjourn the hearing, and must cause a copy of such notice to be served by post upon the defendant, and a further notice that unless upon the day named therein he appears and shows cause against the same, the person to or upon whom such interest, estate, or title has come or devolved will be substituted for or made a joint plaintiff with the plaintiff named in the original summons; and unless cause is so shown such person may be added or substituted as plaintiff accordingly (*m*). Proceedings on change of plaintiff's title before judgment.

(*h*) County Court Rules, Ord. 14, r. 11.

(*i*) County Court Rules, Ord. 17, r. 1. For the principles affecting change of parties and abatement of actions, see generally title PRACTICE AND PROCEDURE.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 94; and see titles BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 133 *et seq.*; PRACTICE AND PROCEDURE.

(*l*) County Court Rules, Ord. 17, r. 9.

(*m*) *Ibid.*, r. 2 (1). For forms of notice, see County Court Rules, Appendix, Forms 115, 117.

SECT. 10. Amendment.

Where change affects more actions than one.

Where, by reason of one and the same event, any person becomes entitled to give such notice in more actions or matters than one, the person may give one notice only in respect of all or any of such actions or matters, specifying in a schedule to such notice all the actions or matters in respect of which notice is given; and in serving a copy of the notice on any defendant in any such action or matter, it is sufficient to set forth such part only of such notice as affects such defendant, without setting forth the rest of the notice (*n*).

Proceedings on change of defendant's title.

1180. Where by reason of any event occurring after the commencement of any action or matter there arises any assignment, creation, change, transmission, or devolution of the liability, interest, estate, or title of any defendant in such action or matter before judgment, the plaintiff or the defendant or the person to or upon whom such liability, interest, estate, or title has come or devolved may in like manner give notice thereof to the registrar, and thereafter the same provisions apply (*o*).

Provisions as to notice in such case.

Where such notice is given by any person other than the person proposed to be substituted or added as a defendant, a copy of the summons must be annexed to the notice to be served on the person proposed to be substituted or added as a defendant, and such notice and summons must be served on such person, according to the rules applicable to the service of the original summons in the action, ten clear days at least before the day fixed for the hearing, and the hearing must be adjourned for such time as may be necessary to enable such notice and summons to be so served (*p*).

Change or transmission of interest.

1181. Where, in any other case it becomes necessary or desirable, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of any action or matter, that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the court, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence (*q*).

Service of order on change or transmission of interest.

Such an order must, unless the court otherwise directs, be served upon the continuing parties, and also upon each new party, unless the applicant be the only new party, according to the rules as to service of ordinary summonses, ten clear days at least before any further proceedings are taken; and in the case of a person who is not already a party, a copy of the summons or petition, and a notice according to the prescribed form must be annexed to the order and

(*n*) County Court Rules, Ord. 17, r. 2 (2).
(*o*) *Ibid.*, r. 3 (1).
(*p*) *Ibid.*, r. 3 (2).
(*q*) *Ibid.*, r. 4. For form of order, see County Court Rules, Appendix, Form 118.

served therewith. The order from the time of such service, if not discharged or varied, is binding on the persons served therewith; and every person served therewith who is not already a party to the action or matter is bound to appear in the same manner as if he had been served with a summons or petition. Such order for adjournment must be made as is necessary (*r*).

Application to vary or discharge order.

1182. Any person not a party to the action or matter who is served with such an order may on or before the day fixed for hearing apply to the court to vary or discharge the order (*s*).

Where person entitled to proceed on death of party fails to do so.

1183. When the plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the action or matter may be continued) may apply to the court for an order directing the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding the action or matter may be struck out, and the court may award costs to the defendant, or (as the case may be) to the person against whom the action or matter might have been continued, in the same manner as in other cases of striking out; and in such case, if the plaintiff has died, execution may issue for such costs (*t*). In a remitted action the administrator of a deceased defendant must apply for such an order in the county court and not in the High Court (*a*).

Alteration of records on change of parties.

1184. In all cases of substitution or addition of parties the minute book must be altered, and proceedings carried on under the altered titled (*b*).

SECT. 11.—*Evidence before Trial.*

SUB-SECT. 1.—*Interrogatories and Discovery of Documents.*

Interrogatories.

1185. Any party to any action or matter may, without filing an affidavit, by leave of the court, deliver interrogatories in writing for the examination of any one or more of the opposite parties. On an application for leave to deliver interrogatories the particular interrogatories proposed to be delivered must be submitted to the court (*c*). The application for leave is governed by the provisions relating to interlocutory applications (*d*).

(*r*) County Court Rules, Ord. 17, r. 5. For form of notice, see County Court Rules, Appendix, Form 119.

(*s*) County Court Rules, Ord. 17, r. 6.

(*t*) *Ibid.*, r. 7. As to execution in such a case, see County Court Rules, Ord. 25, r. 14, and p. 553, *post*.

(*a*) *Duke* v. *Davis*, [1893] 2 Q. B. 260, C. A.

(*b*) County Court Rules, Ord. 17, r. 8.

(*c*) County Court Rules, Ord. 16, rr. 1, 3. Interrogatories must be in the prescribed form with necessary variations (*ibid.*, r. 5). For form of interrogatories, see County Court Rules, Appendix, Form 103. As to interrogatories generally, see title DISCOVERY. The principles of law as to interrogatories are the same in the county court as in the High Court.

(*d*) See p. 507, *ante*.

SECT. 11. Evidence before Trial.

Service of order for interrogatories.

1186. If leave be granted, an order must be drawn up by the registrar and served by the applicant on the party against whom the order is made. Such order must be according to the prescribed form and must specify the number of days within which the interrogatories are to be delivered by the applicant, and also the time within which the affidavit in answer is to be filed (*e*).

Objections to answer.

1187. Any objection to answer any one or more of several interrogatories may be taken in the affidavit in answer (*f*).

Answers to interrogatories.

Interrogatories must be answered by affidavit according to the prescribed form with such variations as circumstances may require. Such affidavit must be filed and a copy thereof delivered to the party interrogating within the time named in the order giving leave to interrogate (*g*).

Further answer.

If any person interrogated omits to answer, or answers insufficiently, the party interrogating, after giving to such person two clear days' notice of the time and place at which he intends to apply, may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either by affidavit or *viva voce* examination before the court, as the court may direct (*h*).

Discovery of documents.

1188. Any party to an action or matter may, without filing any affidavit, apply to the court for an order directing any other party to the action or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any question therein. If an order is made it must be drawn up by the registrar and served by the applicant on the party against whom the order is made. Such order must be according to the prescribed form, and must specify the time within which the affidavit in answer is to be filed (*i*).

Contents of affidavit of documents.

The affidavit to be made by a party against whom an order for discovery has been made must specify which, if any, of the documents therein mentioned he objects to produce, and on what grounds, and it must be according to the prescribed form, with such variations as circumstances may require. Such affidavit must be filed and a copy thereof delivered to the party who obtains the order within the time named in the order (*k*).

(*e*) County Court Rules, Ord. 16, r. 2. For form of order, see County Court Rules, Appendix, Form 102A.

(*f*) *Ibid.*, r. 7. As to the grounds of objection, see title DISCOVERY.

(*g*) *Ibid.*, r. 8. For form of answer, see County Court Rules, Appendix, Form 104.

(*h*) County Court Rules, Ord. 16, r. 9. For form of order, see County Court Rules, Appendix, Form 105.

(*i*) County Court Rules, Ord. 16, r. 10; and see, for the general principles of discovery, title DISCOVERY. For form of order, see County Court Rules, Appendix, Form 106A. As to security on obtaining the order, see note (*a*), p. 515, *post*.

(*k*) County Court Rules, Ord. 16, r. 11. For form of affidavit, see County Court Rules, Appendix, Form 107.

The law and procedure relating to production and inspection of documents, orders as to specific documents and premature discovery, is identical with that obtaining in the High Court (*l*).

Security for costs of discovery.

1189. In every action or matter the costs of discovery by interrogatories or otherwise must, unless the court otherwise orders, be secured by the party seeking such discovery, and may be allowed as part of his costs only where such discovery appears to the judge at the trial, or, if there is no trial, to the registrar on taxation, to have been reasonably asked for (*a*).

Deposit payable on discovery.

Any party seeking discovery by interrogatories or otherwise may be ordered upon making application for discovery to pay into court in the case of interrogatories the sum of 20*s*., and if the number of folios exceeds five the further sum of 2*s*. for each additional folio, or in the case of discovery otherwise than by interrogatories the sum of 20*s*., or (in either case) any less sum or such additional sum as the court shall direct (*b*).

Form of order for discovery.

An order for discovery must state the amount ordered to be paid into court, or that payment into court is dispensed with; and where payment into court is ordered the party seeking discovery must, with his interrogatories or order for discovery, serve a copy of the receipt for the payment into court, and the party from whom discovery is sought is not bound to answer or make discovery unless and until the said copy has been served (*c*).

Disposal of amount paid as security.

Unless the court otherwise orders, the amount paid in as security in any action or matter must after the action or matter has been finally disposed of be paid out to the party by whom the same was paid in, on his request, or to his solicitor on such party's written authority, except in the event of his being ordered to pay costs, in which case the amount in court is subject to a lien for the costs ordered to be paid to any other party. If after the action or matter has been finally disposed of, by consent or otherwise, no taxation of costs is required, the registrar must, by consent of the parties, or on being satisfied that the party by whom the amount was paid in is entitled thereto, pay out the same to such party, or to his solicitor on such written authority as aforesaid (*d*).

Application of provisions to infants.

1190. The provisions as to interrogatories and discovery apply to infant plaintiffs and defendants and their next friends (*e*).

Non-compliance with order for discovery.

1191. Non-compliance with an order to answer interrogatories or for discovery or inspection of documents renders the disobedient party liable to attachment, and every such order must be indorsed with a notice to that effect (*f*).

(*l*) County Court Rules, Ord. 16, r. 12—20; and see County Court Rules, Appendix, Form 108—110. See, generally, title DISCOVERY.
(*a*) County Court Rules, Ord. 16, r. 22.
(*b*) *Ibid.*, r. 23A (1).
(*c*) *Ibid.*, r. 23A (2).
(*d*) *Ibid.*, r. 24.
(*e*) *Ibid.*, r. 25.
(*f*) *Ibid.*, r. 21. For form of notice, see County Court Rules, Appendix, Form 346.

SECT. 11. **Evidence before Trial.**

SUB-SECT. 2.—*Notices to Admit and Produce.*

Notice to admit documents.

1192. Where a party desires to give in evidence any document, he may, not less than five clear days before the trial, give notice to any other party in the action or matter who is competent to make admissions requiring him to inspect and admit such document; and if such other party does not within three days after receiving such notice make such admission, any expense of proving the same at the trial must be paid by him, whatever may be the result, unless the court otherwise orders; and no costs of proving any document must be allowed unless such notice has been given, except in cases where, in the opinion of the judge at the trial or of the registrar on taxation, the omission to give such notice has been a saving of expense(*g*).

Form of notice to admit and produce.

1193. Notices to admit or to produce documents must be according to the prescribed forms, with such variations as circumstances may require. An affidavit of the party or his solicitor, or of some person in the permanent and exclusive employ of either of them, of the service of any notice to admit or to produce, and of the time when it was served, with a copy of the notice to admit or to produce, is in all cases sufficient evidence of the service of the notice and of the time when it was served (*h*).

Unnecessary documents in notice.

1194. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby must be borne by the parties giving such notice (*i*).

SUB-SECT. 3.—*Examination before Trial.*

Examination of witnesses before trial.

1195. The court may in any action or matter, where it appears necessary for the purposes of justice, make an order for the examination upon oath before the court or any officer of the court, or any other person, and at any place in England or Wales, of any witness or person, and may empower any party to any such action or matter to give such deposition in evidence therein on such terms, if any, as the court may direct (*k*). Where any person to be examined resides out of the district of the court the judge may appoint the registrar of the district in which the person resides to take the examination (*l*).

Order for attendance and to produce documents.

1196. The court may in any action or matter, at any stage of the proceedings, order the attendance of any person for the purpose of being examined or of producing to or before any examiner any

(*g*) County Court Rules, Ord. 18, r. 6. As to notice to admit facts, see p. 502, *ante*.

(*h*) *Ibid.*, r. 7. No time for service of such notices is prescribed, and it is submitted that they should be served within a reasonable time before trial. For forms of notices, see County Court Rules, Appendix, Forms 111, 112. As to the effect of notices to admit and produce generally, see title EVIDENCE.

(*i*) County Court Rules, Ord. 18, r. 8.

(*k*) *Ibid.*, r. 18; and see, generally, title EVIDENCE. For form of order, see County Court Rules, Appendix, Form 132. It seems that the county court cannot order a commission for examination of a witness out of the jurisdiction.

(*l*) County Court Rules, Ord. 18, r. 19.

writings or other documents which the court may think fit to be produced, and any person served with such order is bound to attend accordingly, but no person is compelled to produce under such order any writing or other document which he could not be compelled to produce at the trial. Any such order must be served in accordance with the provisions as to the service of summonses to witnesses (*m*).

Disobedience to order for such attendance.

1197. Any person wilfully disobeying an order requiring his attendance for the purpose of being examined or producing any document to or before an examiner is deemed guilty of contempt of court and may be dealt with accordingly (*n*).

Expenses of person attending.

Any person required to attend before an examiner for the purpose of being examined or of producing any document is entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court (*o*).

Documents for examiner.

1198. Where any witness or person is ordered to be examined before an officer of a county court, or before a person appointed for the purpose, the person taking the examination must be furnished by the party on whose application the order was made with a copy of the summons and particulars and of the defence (if any), and with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties (*p*).

Persons entitled to be present.

The examination must take place in the presence of the parties, or their counsel or solicitors, or the agents of such solicitors, and the witnesses are subject to cross-examination and re-examination (*a*).

Depositions how taken.

The depositions taken before an officer of a county court, or before any other person appointed to take the examination, must be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statements of the witness, and when completed must be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness refuses to sign the depositions, the examiner must sign the same. The examiner may put down any particular question or answer if there appears to be any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which are objected to must be taken down by the examiner in the depositions, and he must state his opinion thereon to the counsel, solicitors, or parties, and must refer to such statement in the depositions, but he has no power to decide upon the materiality or relevancy of any question (*b*).

Failure to attend or be sworn.

1199. If any person duly summoned to attend for examination or to produce any document refuses to attend, or if, having attended,

(*m*) County Court Rules, Ord. 18, r. 20 ; and see p. 529, *post*.
(*n*) *Ibid.*, r. 21.
(*o*) *Ibid.*, r. 22.
(*p*) *Ibid.*, r. 23.
(*a*) *Ibid.*, r. 24.
(*b*) *Ibid.*, r. 25.

SECT. 11. Evidence before Trial.

he refuses to be sworn or to answer any lawful question or to produce any document, a certificate of such refusal, signed by the examiner, must be filed with the registrar, and thereupon the party requiring the attendance of the witness may apply to the judge for an order directing the witness to attend, or to be sworn, or to answer any question, or to produce such document, as the case may be (*c*).

Objection to answer.

If any witness objects to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, must be taken down by the examiner and transmitted by him to the registrar to be filed, and the validity of the objection must be decided by the judge (*d*). In any case of refusal to produce documents or to answer questions the judge may order the witness to pay the costs occasioned thereby (*e*).

Filing of depositions.

1200. When the examination of any witness before any examiner has been concluded, the original depositions, authenticated by the signature of the examiner, must be transmitted by him to the registrar to be filed (*f*).

Special report of examiner.

The person taking the examination of a witness under these provisions may, and if need be shall, make a special report to the court touching such examination and the conduct or absence of any witness or other person thereon; and the judge may direct such proceedings and make such order as upon the report he may think just (*g*).

When depositions may be given in evidence.

1201. Except where otherwise provided under these provisions, or directed by the judge, no deposition can be given in evidence at the trial of the action or matter without the consent of the party against whom the same may be offered, unless the judge is satisfied that the deponent is dead, or out of England and Wales, or unable from sickness or other infirmity to attend the trial, in any of which cases the depositions certified under the hand of the examiner are admissible in evidence, saving all just exceptions, without proof of the signature to such certificate (*h*).

Power to administer oaths.

1202. Any officer of the court, or other person directed to take the examination of any witness or person, may administer oaths (*i*).

SUB-SECT. 4.—*Affidavits.*

Form and swearing of affidavits.

1203. All affidavits must be expressed in the first person and must be drawn up in paragraphs and numbered (*k*). Affidavits for use in court may be sworn before any judge, or registrar, or clerk to the registrar nominated by a judge for that purpose, without

(*c*) County Court Rules, Ord. 18, r. 26.
(*d*) *Ibid.*, r. 27.
(*e*) *Ibid.*, r. 28.
(*f*) *Ibid.*, r. 29.
(*g*) *Ibid.*, r. 30.
(*h*) *Ibid.*, r. 31.
(*i*) *Ibid.*, r. 32.
(*k*) County Court Rules, Ord. 19, r. 1. As to affidavits generally, see title EVIDENCE.

the payment of any fee, or before any commissioner to administer oaths in the Supreme Court not being a registrar, or before a justice of the peace (*l*).

Sources of knowledge stated.

All affidavits other than those for which forms are prescribed must state the deponent's occupation, quality, and place of residence, and also what facts or circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are. The costs of every affidavit which unnecessarily sets forth matters of hearsay or argumentative matter, or copies of or extracts from documents, must be paid by the party filing the same (*m*).

Affidavits how intituled.

Every affidavit must be intituled in the action or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant it is sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants as the case may be; and the costs occasioned by any unnecessary prolixity in any such title must be disallowed by the registrar on taxation (*n*).

On whose behalf filed.

It must be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note must be copied on every office or other copy furnished to a party (*o*).

Costs when disallowed.

The costs of affidavits not in conformity with these provisions must, unless the court otherwise directs, be disallowed on taxation (*p*).

When made by two or more deponents.

In every affidavit made by two or more deponents the names of the several persons making the affidavit must be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it is sufficient to state that it was sworn by both (or all) of the "above-named" deponents (*q*).

Filing.

1204. Before any affidavit is used it must be filed in the office of the registrar; but this provision does not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file any affidavit sworn before the making of the order, provided that the order must not be issued until such affidavit has been filed (*r*).

Not to be sworn before party's solicitor.

An affidavit must not be filed which has been sworn before a commissioner who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, correspondent, partner, or clerk of such solicitor, or who is the party himself (*s*).

Erasure, blotting interlineation etc

No affidavit or other document may be filed or used in any action or matter, unless the court otherwise orders, which is blotted so as to obliterate any word, or which is illegibly written,

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 83.
(*m*) County Court Rules, Ord. 19, r. 2.
(*n*) *Ibid.*, r. 3.
(*o*) *Ibid.*, r. 4.
(*p*) *Ibid.*, r. 5.
(*q*) *Ibid.*, r. 6.
(*r*) *Ibid.*, r. 7.
(*s*) *Ibid.*, r. 8.

SECT. 11. Evidence before Trial.

or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom the same is sworn has duly initialled such interlineation or alteration, and in the case of an erasure has re-written and signed in the margin of the affidavit or document the words or figures appearing to be written on the erasure, or which is so imperfect upon the face thereof by reason of having blanks thereon or otherwise that it cannot easily be read or understood (*t*).

Illiterate or blind deponent.

1205. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer must certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit may be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent (*a*).

Use of defective affidavit.

1206. The court may receive any affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received (*b*).

Affidavits of service.

1207. Affidavits of service, when required, must state when, where, how, and by whom service was effected (*c*).

Verification of new trustee's consent to act.

1208. The consent of any person to act as a trustee or new trustee shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor in the prescribed form with such variations as circumstances may require (*d*).

Notice of rejection of affidavits.

1209. Whenever a registrar rejects an affidavit or other document he must give notice, according to the prescribed form, by post or otherwise, to the party offering the same for filing, of such rejection and the reasons thereof; but no such notice is necessary if the party offering the same is present when the registrar rejects the affidavit (*e*).

SECT. 12.—*Jury and Assessors.*

SUB-SECT. 1.—*Jury.*

Trial by judge except where jury summoned.

1210. In all actions brought in the county court the judge is the sole judge to determine all questions of fact and law, unless a jury be summoned (*f*).

(*t*) County Court Rules, Ord. 19, r. 9.
(*a*) *Ibid.*, r. 10.
(*b*) *Ibid.*, r. 11.
(*c*) *Ibid.*, r. 12.
(*d*) *Ibid.*, r. 13. For form of consent, see County Court Rules, Appendix, Form 332.
(*e*) County Court Rules, Ord. 19, r. 14. For form of notice, see County Court Rules, Appendix, Form 133.
(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 100.

Conditions under which jury can be summoned.

1211. In all actions where the amount claimed exceeds £5 the plaintiff or defendant can require a jury to be summoned to try the action unless the same is of the nature of actions in the Chancery Division of the High Court, and where the amount claimed does not exceed £5 the judge, in his discretion, on the application of either party, may order trial by a jury (*g*). Interpleader matters, actions of replevin, or ejectment, or for the recovery of possession, or to enforce any right relating to land, or to recover damages in respect of such right, may, at the instance of either party, be tried by a jury, and by order of the judge any other action or matter, or any question of fact arising therein, may be tried by a jury (*h*).

New trial with jury.

The judge may, in his discretion, at the instance of either party, make it a condition of granting a new trial that it shall take place with a jury, although the former trial did not take place with a jury (*i*).

Notice of demand for jury.

1212. Notice of demand for a jury must be given in writing to the registrar ten clear days at least before the return day, according to the prescribed form, and the registrar must send such demand to the other party forthwith (*k*).

Adjournment of trial to summon jury.

Where a summons has not been served, or notice of trial has not been given, in time to enable a party served with such summons, or to whom such notice has been given, who desires a jury to be summoned, to give notice of demand for a jury in due time, the court may, on the application of such party, adjourn the trial in order that due notice for a jury may be given. In any other case in which notice of demand for a jury has not been given in due time, or where no notice of demand has been given, but at the trial all parties desire to try by a jury, and no jury is there in court, the judge may, on terms, adjourn the trial in order that due notice for a jury may be given (*l*). Where a trial has been adjourned for other reasons, a party who has not originally demanded a jury cannot demand a jury for the adjourned hearing (*m*).

Deposit payable for jury.

1213. The deposit payable on a demand for a jury is 8*s.* (*n*), and such sum is considered as costs in the action unless otherwise ordered by the judge (*o*).

Summons to jurymen.

1214. Whenever a jury is required the registrar of the court must cause so many of the persons named in the list as shall

(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101.
(*h*) County Court Rules, Ord. 22, r. 3.
(*i*) County Court Rules, Ord. 31, r. 2; *Ford* v. *Taylor* (1877), 3 C. P. D. 21; *R.* v. *Harwood* (1853), 22 L. J. (Q. B.) 127.
(*k*) County Court Rules, Ord. 22, r. 1A; and see County Court Rules, Appendix, Forms 142, 143, 144. Proof of notice by the registrar need not be given by either party at the trial (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101).
(*l*) County Court Rules, Ord. 22, r. 2.
(*m*) *Fletcher* v. *Baker* (1874), 43 L. J. (Q. B.) 112.
(*n*) County Court Rules, Ord. 22, r. 1. This fee was altered from 5*s.* to 8*s.* when the number of the jury was increased to eight under the County Courts Act, 1903 (3 Edw. 7, c. 42); see note (*p*), p. 522, *post*.
(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101.

SECT. 12. Jury and Assessors.

Penalty for default of attendance.

be prescribed to be summoned to attend the court at a time and place to be mentioned in the summons, and must administer, or cause to be administered, to such of them as are impanelled an oath to give true verdicts according to the evidence; and the persons so summoned must attend at the court at the time mentioned in the summons, and in default of attendance forfeit such sum of money as the judge shall direct, not being more than £5 for each default; and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, is deemed good service. No person can be summoned or compelled to serve on such jury more than twice within one year, or who has been summoned and has attended upon any jury for the same county at the assizes, or any court of nisi prius, or at the Central Criminal Court within six months next before the delivery of such summons. Whenever there are any jury trials eight jurymen must be impanelled and sworn, as occasion requires, to give their verdicts in the actions which are brought before them in the said court, and being once sworn need not be re-sworn in each trial; and either of the parties to any such action is entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in the High Court; and the jurymen so sworn are required to give a unanimous verdict (*p*).

Jury for equitable action.

Where a jury is summoned on the trial of an equitable action or matter, the jurymen must be summoned from the list of the jurors in the possession of the registrar of the court in which such action was commenced (*q*).

Notice where action settled or withdrawn.

1215. Where a jury has been summoned, but before the return day the action or matter is settled or withdrawn, the party at whose instance the jury was summoned must inform the registrar of the fact; and the registrar must thereupon return the deposit, and, unless the attendance of the persons summoned as jurors is

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 102; County Courts Act, 1903 (3 Edw. 7, c. 42), s. 4. The latter section is as follows: "Section one hundred and two of the County Courts Act, 1888, shall be read as if the word 'eight' were substituted for the word 'five.'" It will be observed that the word "five" was used in the above section both for the number of jurymen and for the amount of the penalty for non-attendance. It is submitted that, according to the reasonable construction of the amendment, the word "eight" should be substituted for the word "five" only in the case of the number of jurymen. The number of jurors summoned to attend at the court is sixteen unless the judge otherwise orders (County Court Rules, Ord. 22, r. 4). For form of order of fine for non-attendance, see County Court Rules, Appendix, Form 145. The sheriff of every county, and the high bailiffs of Westminster and Southwark, must cause to be delivered to the registrar of the court a list of persons qualified and liable to serve as jurors in the courts of assize and nisi prius for their county, city, and borough respectively within fourteen days from the receipt of the jury book from the clerk of the peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the court, for which list the sheriffs and high bailiffs are entitled to receive a fee after the rate of 2*d.* for every folio of seventy-two words (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 102). As to juries generally, see title JURIES.

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101.

required in any other action or matter, forthwith send notice by post to such persons that their attendance will not be required; and where in like case the action or matter is adjourned before the return day, the registrar must forthwith send notice by post to the persons summoned as jurors of the adjournment and of the day on which their attendance will be required (*r*).

SUB-SECT. 2.—*Assessors.*

Power to summon assessors.

1216. In any action or matter the judge may, if he thinks fit, on the application of either party, summon to his assistance one or more persons of skill and experience in the matter to which the action or matter relates, who may be willing to sit with the judge and act as assessors; and their remuneration for so sitting must be at a prescribed rate, and must be costs in the action or matter, unless otherwise ordered by the judge; but, where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by either party in the prescribed manner (*s*).

List of assessors.

1217. The registrar of each court must from time to time, at the request of the judge, submit to him the names of as many persons as the judge may direct, whom, having regard to the nature of the ordinary business of the court, and to their fitness from ability and reputation, the registrar believes to be qualified to act as assessors; and the judge must from the names so submitted frame a list of persons to act as assessors for each court of which he is judge (*t*).

Consent of assessors to act.

The registrar must apply to such persons as the judge may approve to know if they are willing to act as assessors and to attend any court which they may be summoned to attend a reasonable time beforehand; and when the judge has completed the list the same must be printed in alphabetical order and hung up in the court and office (*a*).

Duration of power of assessors.

1218. Every assessor named in such list continues to be an assessor until a new list is framed or he gives notice of resignation to the registrar (*b*).

Remuneration of assessors.

1219. Every assessor receives for each day's attendance one or two guineas according as the subject-matter of the action does or does not exceed £20, together with a sum for expenses by order of the judge (*c*).

Application for assessors.

1220. A party who desires assessors to be summoned must six clear days, or where more than £50 is claimed twelve clear days at least, before the return day file an application therefor according to the prescribed form, giving the names of the assessors he wishes to be summoned, and if he has obtained the consent of the other party to the assessors named he must file such consent with his

(*r*) County Court Rules, Ord. 22, r. 5.
(*s*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 103.
(*t*) County Court Rules, Ord. 21, r. 1.
(*a*) *Ibid.*, rr. 2, 3; and see County Court Rules, Appendix, Form 135.
(*b*) County Court Rules, Ord. 21, rr. 4, 5.
(*c*) *Ibid.*, r. 6.

SECT. 12. Jury and Assessors.

application (*d*). At the time of application the party applying must pay the registrar the sum of two or four guineas according as the subject-matter of the action does or does not exceed £20, and such fees in the absence of a special order are costs in the action (*e*). Where the action is adjourned the assessors' fees for the day of adjournment must be paid by the plaintiff when the order for adjournment is made (*f*).

Approval by judge.

1221. Upon receipt of an application for assessors the registrar must forward a copy of the same to the judge, who, if he thinks fit, returns the same with his approval, and thereupon the registrar must forthwith summon the assessors named. If the judge does not think fit that assessors shall be summoned, notice thereof must be given by the registrar to all parties, according to the prescribed form (*g*).

Notice where opposite party has not consented to proposed assessors.

1222. Where the party applying does not file with his application the consent of the other party to the appointment of the assessors proposed by him, the registrar must, after obtaining the consent of the judge to the appointment of assessors, forthwith cause to be served on the other party notice of the application according to the prescribed form; and the party so served must, as soon as may be after receipt of the notice, inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in such notice or any of them, and must give the names of such assessors as he is willing should be summoned (*h*).

Procedure where party served with notice does not accept appointment.

Where the party served with the notice does not accept the proposed appointment, he must forthwith after receipt of such notice inform the registrar in writing of his non-acceptance and of the reasons thereof, and the registrar must thereupon fix a time and place for hearing such objection and selecting the assessors to be summoned. Such objection may be heard either on the return day of the summons, or before the judge as a special interlocutory matter (*i*), or, if the judge so directs, before the registrar. Notice of the time and place at which the objection will be heard must be given to all parties interested. On the hearing such order may be made as the judge or registrar thinks just, and any costs occasioned by the objection or consequent thereon may be ordered to be paid by the party objecting. When assessors are appointed they must be summoned by the registrar (*k*).

Failure of assessors to attend.

1223. If at the time and place appointed for the trial any of the assessors summoned do not attend, the judge may either proceed to try the action with the assistance of such of the assessors, if any,

(*d*) County Court Rules, Ord. 21, r. 7; Ord. 22A, r. 19; and see County Court Rules, Appendix, Form 136.
(*e*) County Court Rules, Ord. 21, r. 12.
(*f*) *Ibid.*, r. 13.
(*g*) *Ibid.*, r. 8; and see County Court Rules, Appendix, Forms 137, 141.
(*h*) County Court Rules, Ord. 21, r. 9; and see County Court Rules, Appendix, Form 138.
(*i*) Under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 9; see p. 506, *ante*.
(*k*) County Court Rules, Ord. 21, r. 10; and see County Court Rules, Appendix, Forms 139, 140.

as do attend, or, if none attend, without assistance, or he may adjourn the trial (*l*). SECT. 12. Jury and Assessors.

SECT. 13.—*Arbitration.*

1224. The judge may in any case (*m*), with the consent of both parties to the action, order the same with or without other matters within the jurisdiction of the court in dispute between such parties to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference is not revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators, or umpire, must be entered as the judgment in the action, and is as binding and effectual to all intents as if given by the judge: provided that the judge may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid (*n*). Arbitration.

The order may be made at any time after the commencement of the action, and the same fees are payable as on entering judgment on a default summons, but where the reference is ordered to the registrar or any other officer of the court the same hearing fee must be paid as if the action had been tried (*o*). Order and fees.

A county court judge has jurisdiction to stay any proceedings in his court by any party to a submission against any other party in respect of any matter agreed to be referred (*p*). Stay of proceedings.

Part IV.—Trial, Judgment and Execution.

SECT. 1.—*Persons qualified to Practise.*

1225. A party may conduct his own case or employ a solicitor or a barrister retained by a solicitor to do so. A solicitor so acting must be a solicitor acting generally in the action or matter for the party, and not a solicitor retained as an advocate by such first-mentioned solicitor; but subject to these conditions, the right of a solicitor to address the court is not excluded by reason only that he is in the permanent and exclusive employment of any other solicitor, subject to the leave of the judge (*q*). The question whether a solicitor is acting generally in the action or matter is one of fact Conduct of case; position of solicitor.

(*l*) County Court Rules, Ord. 21, r. 11.

(*m*) This includes cases where the parties have agreed to give the county court jurisdiction under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 64 (County Court Rules, Ord. 20, r. 1).

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 104.

(*o*) County Court Rules, Ord. 20, r. 1. For forms of order, see County Court Rules, Appendix, Forms 134, 134A.

(*p*) *Morriston Tinplate Co.* v. *Brooker, Dore & Co.*, [1908] 1 K. B. 403.

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 72; see also title SOLICITORS.

SECT. 1. Persons qualified to Practise.

for the county court judge (*r*), and a clerk exclusively employed by a solicitor acting generally in the action or matter, notwithstanding that he is qualified as a solicitor, must obtain the leave of the judge to address the court (*s*).

No person other than a solicitor can have or recover any fee or reward for conducting a case, and a solicitor may recover costs in respect of his employment of a barrister (*t*).

No notice of employment of advocate necessary.

It is not necessary for either party to give notice to the other, or to the court, of his intention to employ a barrister or solicitor to act as his advocate at the trial, and the allowance of costs for such barrister or solicitor is not affected by want of such notice (*a*).

Proceedings in chambers.

In matters analogous to proceedings in chambers in the High Court the parties may be represented by any person who would be allowed to appear in chambers in the High Court (*b*).

Signature of roll by solicitor.

1226. No solicitor can appear until he has signed a roll or book to be kept for that purpose by the registrar, no fee being payable for so doing, and he must once every year, if required by the registrar, produce his certificate for the year to the registrar, who must note the fact on the roll (*c*).

SECT. 2.—*Non-appearance of Parties.*

Non-appearance of plaintiff.

1227. If, upon the return day or at a continuation or adjournment of the hearing, the plaintiff does not appear when the action is called on for trial, and the defendant appears and does not admit the claim, the action must be struck out and the court may award the defendant all his costs as if the action had been tried, but no hearing fee is charged; the sum for costs so awarded is recoverable in the same way as any debt or damage ordered to be paid by the court (*d*).

If the plaintiff does not appear, but the defendant or someone duly authorised by him appears and admits the cause of action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the judge, if he thinks fit, may give judgment as if the plaintiff had appeared (*e*).

If at an adjournment of an action for the purpose of hearing fresh witnesses the plaintiff does not and the defendant does appear, the judge cannot hear the case and give judgment for the defendant, but should order the case to be struck out (*f*).

These provisions as to non-appearance of plaintiffs apply to executors and administrators (*g*).

(*r*) *Ex parte Rogers* (1868), L. R. 3 C. P. 490.
(*s*) *R.* v. *Oxfordshire County Court Judge*, [1894] 2 Q. B. 440
(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 72.
(*a*) County Court Rules, Ord. 54, r. 8.
(*b*) *Ibid.*, r. 8A. Thus, solicitors' clerks may so appear; see further title PRACTICE AND PROCEDURE.
(*c*) County Court Rules, Ord. 54, r. 7.
(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 88, 89; County Court Rules, Ord. 22, r. 6.
(*e*) County Courts Act, 1888 ((51 & 52 Vict. c. 43), s. 88.
(*f*) *Jordan* v. *Jones* (1880), 44 J. P. 800.
(*g*) County Court Rules, Ord. 30, r. 2.

SECT. 2. Non-appearance of Parties.

1228. Where the plaintiff does not appear and the defendant has given notice of counterclaim he may prove and have judgment on the counterclaim subject to such judgment being set aside on terms if the plaintiff applies to restore the case (*h*).

Non-appearance of defendant.

1229. If the defendant does not appear either by himself or by some duly authorised person, or does not sufficiently excuse his absence, or does not answer when called in court, the judge on due proof of service may proceed to trial on the part of the plaintiff only, and his judgment or order in such a case is as valid as if both parties had attended (*i*), and those provisions are applicable in the case of executors and administrators (*j*).

Powers of registrar on non-appearance of defendant.

1230. If in any action founded on contract a defendant does not appear either in person or by some person duly authorised, and does not show sufficient excuse for his absence, the registrar may by leave of the judge, or in case of the judge's death or unavoidable absence, upon due proof of the service of the summons and of the debt, enter up judgment for the plaintiff, and has the same power of ordering payment by instalments, nonsuit, striking out or adjournment as a judge would have, and the judgment is as valid as if both parties had been present (*k*). Under these provisions the registrar has the same powers of amendment as the judge (*l*).

Non-appearance of either party to default summons.

1231. Where a default summons has been issued and notice of defence given, and neither party appears, the action must be struck out, and where the plaintiff does not and the defendant does appear, the action must be struck out, and costs may be ordered as before stated (*m*); and where the defendant does not and the plaintiff does appear, judgment may be entered for the plaintiff without further proof, the amount to be payable by instalments or otherwise as the court thinks fit (*n*).

Restoring action after striking out for non-appearance.

1232. In any case where an action is struck out owing to the non-appearance of parties the court may order the action to be restored upon terms, and may set aside any order as to costs of the party appearing upon such terms as to payment of costs, adjournment, and notice to the other party as may be just (*o*). If the plaintiff does not appear and the action is struck out, and the judge refuses to restore it or to grant a new trial, the case is at an end and the High Court cannot interfere (*p*). Where an action has been struck out, a subsequent action for the same, or substantially the same, cause of action may be stayed until the order for costs relating to the original action has been obeyed (*q*).

(*h*) County Court Rules, Ord. 22, r. 8.
(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 91.
(*j*) County Court Rules, Ord. 30, r. 2.
(*k*) *Ibid.*, s. 90. This provision is applicable to default summonses (*Hooper* v. *Hill*, [1894] 1 Q. B. 659, C. A.).
(*l*) County Court Rules, Ord. 14, r. 14.
(*m*) See note (*d*), p. 526, *ante*.
(*n*) County Court Rules, Ord. 22, r. 7.
(*o*) *Ibid.*, r. 9.
(*p*) *Jennings* v. *London General Omnibus Co.* (No. 2) (1874), 30 L. T. 640.
(*q*) County Court Rules, Ord. 22, r. 10.

SECT. 2. Non-appearance of Parties.

Where a defendant does not appear and judgment is given against him in his absence, such judgment may be set aside and a new trial granted by the judge on sufficient cause being shown to him for that purpose, and upon such terms as to payment of costs, giving security, or otherwise as he may think just (*r*).

SECT. 3.—*Hearing.*

SUB-SECT. 1.—*Powers of Judge and Registrar.*

Powers of judge in general.

1233. The judge is the sole judge in all actions brought in the court, and must, unless a jury be summoned (*s*), determine all questions of fact and law (*t*). He may try the whole matter of the action upon the appearance of the parties, and when answer has been made in court he may give judgment without further pleading or joinder of issue, or grant any relief, redress, or remedy; he may make any order or may give any direction he may consider necessary to enable him to give a final judgment upon a day to which the trial may be adjourned, and may also make such order as to costs as he may think fit (*a*). He may inspect, or order the jury to inspect, any property or thing concerning which any question may arise in any action or matter (*b*).

Amendment by judge.

1234. The judge has a general power to amend all defects and errors in any proceeding in the court, and must make all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties if they are duly applied for (*c*).

Judge's power to adjourn.

1235. The judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the action or matter, and also may from time to time adjourn any court or the hearing or further hearing of any action or matter in such manner as he thinks fit (*d*). The court may postpone or adjourn the trial upon terms because interlocutory proceedings are pending, if it be shown that they are right and proper (*e*), or when it appears that from the course of the proceedings the trial cannot be held on the return day (*f*), or to enable a party to comply with the rules (*g*), or on the application of one party for good cause shown when the consent of the other party cannot be

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 90, 91.
(*s*) See p. 521, *ante*.
(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 100.
(*a*) *Ibid.*, ss. 79, 113; County Court Rules, Ord. 22, r. 13.
(*b*) County Court Rules, Ord. 22, r. 17. The expenses of such inspection must *primâ facie* be borne by the party applying for the same, the ultimate order being in the discretion of the court (*ibid.*).
(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 87. As to amendment generally, see p. 508, *ante*.
(*d*) *Ibid.*, s. 106; County Court Rules, Ord. 12, r. 12.
(*e*) County Court Rules, Ord. 12, r. 13. For form of order in such a case, see County Court Rules, Appendix, Form 92.
(*f*) County Court Rules, Ord. 12, r. 14. The registrar must send notice thereof to the parties (*ibid.*). See also County Court Rules, Appendix, Form 93.
(*g*) County Court Rules, Ord. 12, r. 15.

obtained (*h*). The parties cannot adjourn a trial without the sanction of the judge or registrar (*i*).

Where officer a party.

1236. Where any parties to an action are officers of the court, the judge, if he thinks fit, may direct the trial to take place at some convenient court of which he is not the judge (*k*).

Registrar's powers where defendant admits claim.

1237. Where a defendant appearing at the hearing, either in person or by some person duly authorised on his behalf, admits the claim, the registrar may, by leave of the judge, or in case of the judge's death or unavoidable absence, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as a judgment of the court. Subject to rules and orders made under the County Courts Act a registrar may, on the application of the parties and by leave of the judge, hear and determine any disputed claim where the sum claimed or amount involved does not exceed £2 (*l*). The leave of the judge under this provision may be either general or special (*m*), but where it is given the registrar must ask the parties whether they desire to have the case heard by him or by the judge (*n*).

Reference to registrar of matter of account.

The judge may after deciding or reserving any question of liability refer to the registrar any mere matter of account which is in dispute between the parties, and after deciding the question of liability may give judgment on the registrar's report (*o*).

SUB-SECT. 2.—*Witnesses.*

Summonses to witnesses.

1238. Either of the parties to any action or matter may obtain from the registrar summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in the possession or control of the person summoned as a witness; and such summonses, and any summonses which may be required to be served personally, may, under such regulations as may be prescribed, be served by a bailiff of the court or otherwise (*p*).

Service of witness summons.

Summonses to witnesses, to be served either in the home or in any foreign district, may be issued without leave, and may, by leave of the judge or registrar, be issued in blank, and served by the party applying for the same, or by his solicitor or by some person in the permanent and exclusive employment of the party or his solicitor, but in any case only one name may be inserted in the summons (*q*).

Time and mode of service.

It is sufficient if the summons is served within a reasonable time,

(*h*) County Court Rules, Ord. 12, r. 16.
(*i*) *Morgan* v. *Rees* (1881), 6 Q. B. D. 508, C. A.
(*k*) County Court Rules, Ord. 22, r. 23. As to the general powers of transfer possessed by the court, see p. 482, *ante*.
(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 92.
(*m*) County Court Rules, Ord. 22, r. 24.
(*n*) *Ibid.*, r. 25.
(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 92.
(*p*) *Ibid.*, s. 110.
(*q*) County Court Rules, Ord. 18, r. 3. For forms of summons to give evidence and produce documents, see County Court Rules, Appendix, Forms 123, 124.

SECT. 3. Hearing.

and the summons may be served by delivering it to the witness personally, or to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the witness, or in cases of witnesses in special kinds of employment in the special manner prescribed for the service of an ordinary summons (*r*). For the purposes of this provision a place of business must not be deemed to be the place of business of a witness, unless he is the master or one of the masters thereof (*s*).

Order for production of documents by witness.

Where a witness served with a summons containing a direction for the production of any documents at the trial does not produce the same, the judge may, upon admission or proof that the summons was served within a reasonable time, and that such documents are in the possession or power or under the control of the party so served, and that they relate to the matter then pending before him, make an order for their production by the witness, and may deal with them, when produced, and with all costs occasioned by their non-production, as may be just; but this provision does not prevent the receiving of secondary evidence where admissible (*t*).

Allowance to witnesses.

1239. Witnesses are entitled to an allowance on the prescribed scale, which must be tendered at the time of service (*a*).

Penalty for non-attendance as witness.

1240. Every person summoned as a witness, either personally or in any other prescribed manner, to whom at the same time payment or a tender of payment of his expenses has been made on the prescribed scale of allowances, and who refuses or neglects, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, or who refuses to be sworn or give evidence, and also every person present in court who is required to give evidence, and who refuses to be sworn or give evidence, is liable to forfeit and pay such fine, not exceeding £10, as the judge directs; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, may be applied towards indemnifying the party injured by such refusal or neglect, and the remainder thereof must be accounted for by the registrar to the treasurer (*b*).

Order for bringing up prisoner as witness.

1241. A judge in any case, upon application on an affidavit by either party, may in his discretion issue an order under his hand and the seal of the court for bringing up before the court any prisoner or person confined in any gaol, prison, or place, under any sentence or under commitment for trial or otherwise, except under process in any civil action or matter, to be examined as a witness in any action or matter depending or to be inquired of or determined in or before such court; and the person required by any such warrant or order to be brought before the court must be so

(*r*) See p. 469, *ante*.
(*s*) County Court Rules, Ord. 18, r. 4.
(*t*) *Ibid.*, r. 5.
(*a*) See p. 595, *post*.
(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 111; compare *R.* v. *Snagge*, [1909] 1 K. B. 644, C. A.; and see, generally, title EVIDENCE. For forms of order of such fines and warrants to enforce them, see County Court Rules, Ord. 52, r. 7, and Appendix, Forms 126—129.

brought under the same care and custody and be dealt with in like manner in all respects as a prisoner required by any writ of *habeas corpus* awarded by the High Court to be brought before such court to be examined as a witness in any action or matter pending before such court is by law required to be dealt with. The person having the custody of such prisoner or person is not bound to obey such order unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner or person in going to, remaining at, and returning from such court (*c*).

SUB-SECT. 3.—*Proceedings in Court.*

Oral evidence.

1242. Generally speaking, the evidence of witnesses at the trial must be taken orally upon oath (*d*). The judge may in all cases disallow any question put in cross-examination of any party or witness which may appear to him vexatious and irrelevant (*e*).

Affidavit evidence.

1243. The judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the trial or hearing, on such conditions as he may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before an examiner, but where it appears to the judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, no order can be made authorising his evidence to be given by affidavit (*f*).

Service of copy of affidavit on opposite party.

A party who desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts as to which no order has been made as above, may, not less than four clear days before the trial, give a notice, with a copy of such affidavit annexed, to the party against whom it is to be used; and unless such last-mentioned party two clear days at least before the trial gives notice to the other party that he objects to the use of such affidavit, he is taken to have consented to the use thereof, unless the judge otherwise orders; and the judge may make such order as he may think fit as to the costs of or incidental to any such objection (*g*).

Use of affidavit evidence.

Affidavits and depositions must be read as the evidence of the person by whom they are used (*h*). Upon the hearing of a petition or application in an equitable action affidavit evidence must be used,

(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 112; and see, generally, title EVIDENCE. For forms of affidavit and warrant, see County Court Rules, Appendix, Forms 130, 131.

(*d*) County Court Rules, Ord. 18, r. 1. As to competency, swearing, examination and cross-examination of witnesses, position of witnesses summoned to produce documents, documentary evidence and stamping of documents, see title EVIDENCE.

(*e*) County Court Rules, Ord. 22, r. 12.

(*f*) County Court Rules, Ord. 18, r. 2. As to affidavits, see p. 518, *ante*; and title EVIDENCE.

(*g*) *Ibid.*, r. 11. Where more than £50 is claimed the notices required are eight and four clear days respectively (County Court Rules, Ord. 22A, r. 18).

(*h*) County Court Rules, Ord. 18, r. 17.

SECT. 3. Hearing.

unless the judge otherwise orders, and the judge may refer any matter to the registrar for inquiry and report (*i*).

What evidence may be given.

1244. Subject to the general powers of amendment possessed by the court (*k*), no evidence may be given at the hearing of any demand or claim except of that stated on the summons or other proceeding (*l*).

Proof of documents.

1245. Documents produced from proper custody may be read without further proof unless they are objected to, when the court may be adjourned for the proof thereof, subject to the objecting party paying the costs caused by his objection should it prove unsuccessful (*m*). An unstamped or insufficiently stamped instrument may only be given in evidence where the registrar's receipt for unpaid duty, the penalty payable, and the sum of £1 is produced (*n*).

Use of evidence subsequently.

1246. All evidence taken at the trial may be used in any subsequent proceedings in the same action or matter (*o*). Evidence taken after trial must be taken as nearly as may be in the same manner as evidence taken at or with a view to the trial (*p*) and is subject to the special directions of the court (*q*). Similarly, the prevailing practice of examination and cross-examination applies to evidence taken at any stage of the action or matter (*r*).

Use of answers to interrogatories.

1247. Answers to interrogatories may be used in evidence wholly or in part, but where they are used in part the judge may look at all the answers, and where he finds those omitted closely connected with those put in he may order the former to be put in also (*s*).

Adding parties.

1248. Absent parties may be added at the hearing upon such terms as to costs and otherwise as the judge thinks fit (*t*), and where a defendant is so added an order to that effect must be drawn up and served on him (*a*).

Procedure on counterclaim.

1249. A counterclaim may be proceeded with notwithstanding that the action is stayed, discontinued, or dismissed (*b*), and a counterclaim or other incidental claim arising at the trial may be ordered by the judge to be disposed of as an independent action where he thinks it can be better disposed of in this way (*c*).

Party entitled to begin.

1250. At the trial the party entitled to begin is the party on whom the burden of proof lies, that is the party who substantially asserts the affirmative of the issue (*d*).

(*i*) County Court Rules, Ord. 38, rr. 5, 6.
(*k*) See p. 508, *ante*.
(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 80.
(*m*) County Court Rules, Ord. 18, r. 9; and see title EVIDENCE.
(*n*) *Ibid.*, r. 10.
(*o*) *Ibid.*, r. 12.
(*p*) *Ibid.*, r. 13.
(*q*) *Ibid.*, r. 15.
(*r*) *Ibid.*, r. 14.
(*s*) *Ibid.*, r. 16. As to interrogatories generally, see p. 513, *ante*.
(*t*) County Court Rules, Ord. 22, r. 18.
(*a*) County Court Rules, Ord. 14, r. 11.
(*b*) County Court Rules, Ord. 22, r. 19.
(*c*) *Ibid.*, r. 20.
(*d*) *Amos* v. *Hughes* (1835), 1 Mood. & R. 464; and see *Mills* v. *Barber* (1836), 1 M. & W. 425, 427.

SECT. 3. Hearing.

Where, as is generally the case, the *onus* of proof of the issue is on the plaintiff, he or his advocate opens the case, and his witnesses are then called, examined, cross-examined, and re-examined.

Speeches and order thereof.

1251. The defendant or his advocate is only allowed one speech as of right (*e*). As a rule, where he calls evidence, he opens his case and calls his witnesses; but he may by leave of the judge defer his speech until after he has tendered his evidence. It is in the discretion of the judge to allow the defendant or his advocate to open his case, and, at the conclusion of his evidence, to make a second speech summing up such evidence.

Right of reply.

In any case in which the defendant calls evidence the plaintiff has a right of reply (*f*), and it seems that where the defendant calls evidence of entirely new matter which has not been the subject of cross-examination of the plaintiff's witnesses the plaintiff by leave of the judge may call evidence in reply.

Where the defendant calls no evidence he is entitled to speak after the plaintiff's concluding speech. In the case of two defendants, where one calls witnesses and the other does not, the latter has the right to speak after the plaintiff's concluding speech (*g*).

Procedure with jury.

Where there is a jury either party is entitled to his lawful challenge against all or any of the jurymen according to the practice of the High Court (*h*), and the verdict of the jury must be unanimous (*i*). The judge sums up to the jury in the same manner as in the High Court (*k*). Where an action is tried with a jury neither the fact that money has been paid into court nor the amount thereof may be communicated to them until after verdict, and their verdict must be found without reference to any payment into court (*l*).

Note on point of law.

1252. If any point of law arises at the trial or in the course of the summing-up upon which it is intended to rely in case an appeal ensues, the judge should be requested to take a note thereof at the time when it so arises (*m*).

SECT. 4.—*Judgment.*

SUB-SECT. 1.—*In General.*

Definition.

1253. Judgment means the final decision of the court in any action (*n*).

Injunction.

An injunction may be included in the judgment and may be applied for before, at, or after the trial or hearing in accordance with the practice governing interlocutory applications (*o*).

(*e*) *Dymock* v. *Watkins* (1883), 10 Q. B. D. 451, C. A.
(*f*) *Clack* v. *Clack*, [1906] 1 K. B. 483.
(*g*) *Ryland* v. *Jackson* (1902), 18 T. L. R. 574.
(*h*) See title JURIES.
(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 102.
(*k*) See title PRACTICE AND PROCEDURE.
(*l*) County Court Rules, Ord. 9, r. 26. Compare R. S. C., Ord. 22, r. 22; and see title PRACTICE AND PROCEDURE.
(*m*) See p. 604, *post*.
(*n*) County Court Rules, Ord. 55.
(*o*) County Court Rules, Ord. 22, r. 16. As to the practice, see p. 504, *ante*.

SECT. 4. Judgment.

Judgment in administration action.

1254. In any action involving the execution of a trust or the administration of the estate of a deceased person, the judge need not give judgment for general execution or administration if the questions at issue can be properly decided without such judgment, but he may make such order as shall be necessary for determining such questions without a general judgment (*p*). In such cases, where no accounts or insufficient accounts have been rendered, the judge may order the application to stand over so that the necessary accounts may be rendered in the meantime, with an intimation that, unless this is done, the costs may be payable by the defaulting party, or may make the usual order for administration with a proviso that no proceedings must be taken on the judgment without his personal leave (*q*). In such an action the judge may order service of notice of the judgment on the persons interested, such notice to be prepared by the registrar and served as a summons in the action. Such notice binds the persons interested, but they may apply after notice at the next sitting of the court to discharge or vary the judgment (*r*). The judge has a discretion to dispense wholly with such service, or order substituted service or notice by advertisement in lieu thereof (*s*).

Action relating to land.

1255. In an action of ejectment or for recovery of possession or damages in respect of any right relating to land, a plaintiff whose title appears to have existed at the time of entry of the plaint, but to have expired before the return day, is entitled to judgment according to the fact that he was so entitled, and to costs of the action, unless the judge otherwise orders (*t*).

Finality of judgments.

1256. Except where otherwise provided, every judgment and order of the court is final and conclusive between the parties (*u*), and the judge cannot, except by consent, alter a judgment he has formally given (*w*). The judgment is a bar to subsequent proceedings in another court upon the same cause of action (*a*), and is conclusive as an estoppel (*b*); but this does not prevent a defendant who has raised a counterclaim in excess of the county court jurisdiction which has been objected to by the plaintiff from recovering in the High Court the balance of his counterclaim (*c*). Similarly, where a defendant cannot set up a counterclaim owing to non-compliance with the rules of practice, the judgment in the

(*p*) County Court Rules, Ord. 22, r. 14.

(*q*) *Ibid.*, r. 15. As to accounts and inquiries, see p. 540, *post*.

(*r*) County Court Rules, Ord. 3, rr. 27—29.

(*s*) *Ibid.*, r. 30.

(*t*) County Court Rules, Ord. 23, r. 16.

(*u*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 93. For new trial, see p. 548, *post*.

(*w*) *Irving* v. *Askew* (1870), L. R. 5 Q. B. 208; *The Recepta*, [1893] P. 255, C. A. It would seem that the judge has power to correct accidental slips and errors in the same manner as in the High Court; compare R. S. C., Ord. 28, r. 11.

(*a*) *Austin* v. *Mills* (1853), 9 Exch. 288; *Berkeley* v. *Elderkin* (1853), 1 E. & B. 805.

(*b*) *Flitters* v. *Allfrey* (1874), L. R. 10 C. P. 29; *Routledge* v. *Hislop* (1860), 2 E. & B. 549.

(*c*) *Webster* v. *Armstrong* (1885), 54 L. J. (Q. B.) 236.

action will not prevent his raising such counterclaim subsequently in another action between the same parties or by original action (*d*).

Damages to goods and injury to the person, though they have been occasioned by the same wrongful act, are infringements of different rights and give rise to distinct causes of action, and therefore judgment for damages to goods is no bar to a subsequent action for injury to the person (*e*). Different causes of action.

1257. A county court judgment does not carry interest (*f*). No interest.

1258. All ordinary judgments and orders must be entered by the registrar in the minute book, and where the order is made against a married woman a note thereof must be made (*g*). An ordinary judgment must be in the prescribed form, and, in the case of a married woman, widow, or divorced woman in respect of a contract or tort before or during coverture, must be in the special form provided (*h*). Where a judgment for costs is made against a married woman who is a plaintiff a similar form to that above is prescribed, with a proviso reserving liberty to apply (*i*) for the payment of such costs out of any property of the married woman which is subject to a restraint on anticipation (*k*). Entry of judgment.

1259. Every special judgment or order in the nature of a decree must be prepared by the registrar, and the draft thereof delivered by him to the successful party, together with an appointment to settle the same. The successful party must submit the draft to his opponent for approval and give notice of the appointment to settle. In case of disapproval by either party the registrar must finally settle the draft in the presence of such of the parties as attend. Either party dissatisfied with the judgment or order as so settled may apply to the judge on not less than four days' notice to vary and finally settle the same, but, except by leave of the court, such notice does not operate as a stay of proceedings. The judge on the hearing of such application may refuse to make any order if the application has not been made at the next sitting of the court available after the judgment or order has been settled by the registrar. The judgment or order when finally settled must be sealed with the seal of the court, and filed of record, and a minute of such filing, with the date thereof, must be entered in the minute book (*l*). Preparation of special judgment.

1260. Where a judgment or order directs any deed to be prepared and executed, it must state by which party the said deed is to be Preparation of deed ordered.

(*d*) *Stanton* v. *Styles* (1850), 5 Exch. 578.
(*e*) *Brunsden* v. *Humphrey* (1884), 14 Q. B. D. 141, C. A.
(*f*) *R.* v. *Essex County Court Judge* (1886), 18 Q. B. D. 704, C. A.
(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 28; County Court Rules, Ord. 23, r. 1.
(*h*) County Court Rules, Ord. 23, r. 2. For form of ordinary judgment, see County Court Rules, Appendix, Form 151; and of judgment against married woman etc., see *ibid.*, Form 151A. See also title HUSBAND AND WIFE.
(*i*) Under Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2; see title HUSBAND AND WIFE.
(*k*) County Court Rules, Ord 23, r. 3.
(*l*) *Ibid.*, r. 4.

SECT. 4. Judgment.

prepared and to whom it is to be submitted for approval; and if the parties cannot agree upon the form thereof, the judge may, upon the application of either party, settle the same himself, or name a conveyancing counsel by whom the same shall be settled, subject to the final approval of the judge (*m*).

What orders not to be drawn up.

1261. Except where expressly provided, no order giving leave to take any proceeding and no interlocutory order need be drawn up or served unless the court otherwise orders (*n*).

Liberty to apply in equity matters.

1262. In every final judgment or order made upon a petition or application in any equitable matter liberty to apply must be given to the parties (*o*), and any such order must, as soon as conveniently may be done after the making thereof, be drawn up, sealed, and filed by the registrar (*p*).

Judgment otherwise than for money and costs.

1263. Every judgment or order given or made in any action or matter requiring any person to do an act thereby ordered, other than the payment of money or costs, must state the time, or the time after service of the judgment or order, within which the act is to be done, and a copy of the judgment or order must be served personally upon the person required to obey the same, on which copy shall be indorsed a memorandum according to the prescribed form (*q*).

Certificate of judgment.

1264. Any person requiring a certificate of any judgment or order must state in writing whether such certificate is required for the purpose of taking proceedings thereon in another court or for the purpose of evidence only, and the registrar in the latter case must state thereon the purpose for which it is required (*r*).

Sale of real property.

1265. Subject to the following provisions, where real property is ordered to be sold, the judgment or order must direct who shall have the conduct of the sale, and by whom the conditions and contracts of sale and the abstract of title must be prepared, and the registrar has all the powers of a master of the Chancery Division of the High Court to settle such conditions and contracts, and to fix reserved biddings; and where any conditions or contracts are ordered to be settled by a conveyancing counsel the order must name the counsel to whom they are to be submitted (*s*).

Delivery of possession for sale.

Where any real estate is ordered to be sold, any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, must deliver up such possession or receipt to the purchaser, or such other person as may be directed (*t*).

(*m*) County Court Rules, Ord, 23, r. 17.
(*n*) *Ibid.*, r. 5.
(*o*) County Court Rules, Ord. 38, r. 7.
(*p*) *Ibid.*, r. 8.
(*q*) County Court Rules, Ord. 23, r. 9. For form of memorandum, see County Court Rules, Appendix, Form 346.
(*r*) County Court Rules, Ord. 23, r. 10. For form of certified copy of judgment, see County Court Rules, Appendix, Form 155.
(*s*) County Court Rules, Ord. 23, r. 18. For forms of sale of real estate, see County Court Rules, Appendix, Forms 304, 306. As to the powers of a Chancery master, see title PRACTICE AND PROCEDURE.
(*t*) County Court Rules, Ord. 23, r. 19.

Sale of other property.

1266. Where a judgment or order is given or made directing any property to be sold, the same must, unless otherwise ordered, be sold, with the approbation of the judge, to the best purchaser that can be got, and all proper parties must join in the sale and conveyance as the judge directs (*a*). Affidavits for the purpose of enabling the court to fix reserved biddings must state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed (*b*). In case of sales under the direction of the court the particulars of sale must be signed by and the result of the sale must be certified under the hands of the auctioneer and the solicitor of the party having the conduct of the sale; no affidavit verifying the particulars or the result of the sale need be filed (*c*). Where an order directs any personal property to be sold, the same must be sold, under the superintendence of the high bailiff, by public auction, unless the court otherwise directs (*d*).

Delivery to bailiff of judgment.

1267. Any judgment or order for the payment of money or costs or both, or any other order, must, subject to any special order by the court and subject to these provisions, be prepared by the registrar and delivered to the bailiff, who must within twenty-four hours send the same, by post or otherwise, to the party on whom service has to be made; but the party in whose favour any such judgment or order has been made need not prove, previously to his taking proceedings thereon, that it was posted or reached the opposite party (*e*).

Service of judgment on solicitor.

When a party acts by a solicitor, service of any judgment or order in the nature of a decree, and of any interlocutory order, or any notice relating to any such order when directed to be served, may be made by or upon such solicitor, as the case may be (*f*).

Judgment on default summons.

1268. No order for judgment on a default summons need be drawn up or served, unless the judgment is for payment by instalments or the plaintiff has formally abandoned a part of his claim (*g*).

Guardian *ad litem* under judgment.

1269. At any time during the proceedings under any judgment or order the judge may, if he thinks fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition who has been served with notice of such judgment or order (*h*).

Notes of proceedings.

1270. Notes must be kept of all proceedings before the registrar under any judgment or order, so that all such proceedings in each action or matter may appear consecutively and in chronological

(*a*) County Court Rules, Ord. 23, r. 20.
(*b*) *Ibid.*, r. 21.
(*c*) *Ibid.*, r. 22.
(*d*) *Ibid.*, r. 23. For form of order for sale, see County Court Rules, Appendix, Form 305.
(*e*) *Ibid.*, r. 7.
(*f*) *Ibid.*, r. 6.
(*g*) *Ibid.*, r. 8. As to abandonment, see p. 459, *ante*.
(*h*) County Court Rules, Ord. 7, r. 56.

SECT. 4. Judgment.

order, with a short statement of the questions or points decided or ruled at every hearing (*i*).

SUB-SECT. 2.—*Judgment under Bills of Exchange Act*, 1855.

Judgment under Bills of Exchange Act, 1855.

1271. Where a plaintiff sues under the above Act (*j*), the defendant cannot appear and defend without getting leave; if the defendant has not obtained leave to appear and defend, the plaintiff may sign final judgment (*k*). Such judgment may include interest, costs, and the expenses incurred in noting the dishonoured bill or notes for non-acceptance or non-payment (*l*). Where the defendant does not obtain leave and final judgment is signed, it must be in the same form as when judgment is entered upon a default summons in default of defence (*m*).

Setting aside judgment.

The judgment may under special circumstances be set aside by the judge on terms (*n*), and application to set aside a judgment must be made to the judge himself, execution being stayed until the hearing of the application upon the defendant giving security (*o*).

SUB-SECT. 3.—*Non-suit.*

Non-suit generally.

1272. If upon the return day the plaintiff appears, but does not make proof of his claim to the satisfaction of the court, the judge may non-suit the plaintiff or give judgment for the defendant (*p*). The registrar has the same power by leave of the judge where the defendant does not appear (*q*). Formerly the plaintiff could claim a non-suit as of right, but now the judge only has the power to non-suit, and such power appears to be the same as that once existing in the High Court (*r*).

Grounds for non-suit.

The judge should non-suit the plaintiff when there is no evidence to support the plaintiff's case (*s*), and he may hold that there is for this purpose no evidence when there is no substantial evidence, a mere *scintilla* of evidence not being sufficient, and in the case of a jury when there is no evidence on which they may reasonably and properly conclude the facts necessary to maintain the plaintiff's case (*t*). Where from the plaintiff's evidence it appears that the

(*i*) County Court Rules, Ord. 24, r. 36.
(*j*) 18 & 19 Vict. c. 67; see p. 447, *ante*.
(*k*) See p. 489, *ante*.
(*l*) Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), ss. 1, 5.
(*m*) County Court Rules, Ord. 35, r. 1A. For form of judgment, see County Court Rules, Appendix, Form 151.
(*n*) Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 3.
(*o*) County Court Rules, Ord. 35, r. 4.
(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 88, 93.
(*q*) *Ibid.*, s. 90; and see p. 529, *ante*.
(*r*) *Robinson* v. *Lawrence* (1851), 7 Exch. 123. In the High Court, the practice of which must be followed in cases not expressly provided for (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 164), the plaintiff has now no right to be non-suited, but must either have judgment against him after the case has been tried out, or leave to discontinue on terms (*Fox* v. *Star Newspaper Co.*, [1900] A. C. 19).
(*s*) *Ryder* v. *Wombwell* (1868), L. R. 4 Exch. 32, 39, Ex. Ch.
(*t*) *Gee* v. *Metropolitan Rail. Co.* (1873), L. R. 8 Q. B. 161, Ex. Ch.; *Toomey* v. *London, Brighton and South Coast Rail. Co.* (1857), 3 C. B. (N. S.) 146, 150.

defendant is not the person liable, the latter is entitled to judgment and the plaintiff is not entitled to a non-suit (*u*).

Effect of non-suit.

After being non-suited the plaintiff may bring another action for the same, or substantially the same, cause of action, but such an action may be stayed until he complies with any order as to costs made against him upon the non-suit (*w*).

Action struck out for want of jurisdiction.

In the absence of consent by the parties, an action commenced in the county court over which the court has no jurisdiction must be struck out, and costs are awarded as if the plaintiff had failed to appear or had appeared and failed to prove his case (*a*).

SUB-SECT. 4.—*Time for Payment and Instalments.*

Time for payment under ordinary judgment.

1273. Money payable under an ordinary judgment must be paid within fourteen days from the date of judgment, unless the court at the time of giving judgment otherwise orders and unless the plaintiff, or his counsel or his solicitor or agent, consents that the same may be paid by instalments, in which case the court must order the same to be paid at the time and by the instalments consented to (*b*).

Instalments where less than £20 recovered.

Where judgment has been obtained for a sum not exceeding £20 exclusive of costs the court may order such sum and costs to be paid at such times and by such instalments, if any, as it thinks fit (*c*). The instalments are payable as the order directs, and if no period is mentioned the first becomes due on the twenty-eighth day from the day of making the order, and the successive instalments become due at a like period of twenty-eight days from the day of the last previous instalment becoming due (*d*).

Judgment where more than £20 recovered.

Where judgment is given or an order made for the recovery or payment of a sum of money exceeding £20 and costs, such judgment or order may direct the sum to be paid forthwith or within fourteen clear days from the date thereof, and may direct the costs to be taxed and paid forthwith or within fourteen clear days after taxation (*e*).

Payment into court necessary.

In all cases money payable under a judgment must be paid into court and the registrar must give notice according to the prescribed form to the party in whose favour the money is so paid, where the payment exceeds ten shillings (*f*).

(*u*) *Westgate* v. *Crowe* (1907), 24 T. L. R. 14.
(*w*) County Court Rules, Ord. 22, r. 10.
(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 114.
(*b*) *Ibid.*, s. 105; County Court Rules, Ord. 23, r. 11.
(*c*) *Ibid.* It is submitted, there being no provision or authority to the contrary, that this power extends to a judgment on a default summons.
(*d*) County Court Rules, Ord. 23, r. 11. Where a registrar entered in the minute book a note of a committal order, suspended on payment of instalments, containing the words "10*s.* a month," the month was held to be a lunar month by virtue of this provision (*Saunders* v. *Swansea Finance Co. and Home* (1905), 21 T. L. R. 317, C. A.).
(*e*) County Court Rules, Ord. 23, r. 12.
(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 105; County Court Rules, Ord. 23, rr. 11, 13. For form of notice, see County Court Rules, Appendix, Form 156. An acknowledgment of the payment is made (County Court Rules, Ord. 2, rr. 9, 11).

SECT. 4. Judgment.

Order for instalments on unsatisfied judgment.

1274. Where there is an unsatisfied judgment or order the party entitled to enforce it may apply *ex parte* to the court in which the same was given or made to order that the amount due and unpaid be paid by instalments, or, if payable by instalments, by the like or smaller instalments; and the court may thereupon make an order accordingly (*g*).

Registrar's jurisdiction over instalments.

The registrar may, by leave of the judge, deal with any application under this provision out of court, and without requiring the attendance of the applicant; but he may, and where no payment has been made within six years before the date of the application he must, refer such application to the judge, who may make such order in the matter as he thinks right, and may require the attendance of the applicant (*h*).

Entry of order for instalments.

An order made on an application under this provision must be entered in the minute book and prepared and served as a judgment, and has the same effect as a fresh order for payment by instalments made on the hearing of a judgment summons (*i*).

Application by judgment debtor for order for instalments.

1275. Where a judgment has been given or an order made for the payment of any sum not exceeding £20, exclusive of costs, by instalments or otherwise, and it appears to the satisfaction of the judge that the person liable under the judgment or order is unable to pay the sum ordered to be paid at the time or by the instalments ordered, he may, on the application of such person, made on notice served on the party entitled to enforce the judgment or order two days at least before the hearing of the application, order the amount due and unpaid under the judgment or order to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments, and may from time to time vary such order (*k*).

Application for order for larger instalments by creditor.

In like manner, if it appears to the satisfaction of the judge that the person liable under any such judgment or order is able to pay the sum ordered to be paid either in one sum or by larger instalments than those ordered, he may, on the application of the person entitled to enforce the judgment or order, made on the like notice to the person liable thereunder, order the amount due and unpaid to be paid in one sum, or by larger instalments than those previously ordered, and may from time to time vary such order (*l*).

Entry of order.

An order made on an application under this provision must be entered in the minute book and prepared and served as a judgment, and has the same effect as a fresh order for payment made on the hearing of a judgment summons (*m*).

SUB-SECT. 5.—*Accounts and Inquiries.*

Registrar to take accounts and inquiries.

1276. Where a judgment or order directs that any account be taken or inquiry made, such account must be taken and inquiry

(*g*) County Court Rules, Ord. 23, r. 14 (1), (2). The application may be made at any sitting of the court or by request in writing to the registrar (*ibid.*). For form of order for fresh instalments, see County Court Rules, Appendix, Form 157.

(*h*) County Court Rules, Ord. 23, r. 14 (3).

(*i*) *Ibid.*, r. 14 (4).

(*k*) *Ibid.*, r. 15 (1). See title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 296 *et seq.*

(*l*) County Court Rules, Ord. 23, r. 15 (2).

(*m*) *Ibid.*, r. 15 (3).

made by the registrar, who for that purpose has all the powers of a master of the Chancery Division of the High Court; and all parties have the same power of summoning witnesses, including as witnesses any parties in the action, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they would have upon the trial of an action; and all provisions as to the summoning, swearing, and examining of witnesses, and the production of documents at the trial, are applicable (as far as may be) to such summoning, swearing, examining, and production on taking any such accounts, or prosecuting any such inquiries (*n*).

Summons to attend proceedings.

1277. Where the registrar is directed to make inquiries or to take accounts, he must by summons, according to the prescribed form, returnable not less than seven days from the date of the order, addressed to all parties entitled to attend, direct such parties to attend at his office or at the court for the purpose of proceeding with such inquiries or accounts. In all cases in which advertisements are ordered the return day must be not less than twenty-one days after the date of the order, and the registrar must forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of the proceedings, and must insert the same fourteen days previous to the day appointed (*o*).

Hearing.

1278. Upon the day so appointed, or at any adjourned sitting, the registrar must sit at the time and place appointed, and hear all parties interested, their counsel or solicitors (*p*).

Adding necessary parties.

1279. If on the hearing of the summons to proceed it appears that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts must not be proceeded with, and no other proceeding must be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties have been served and are bound, or service has been dispensed with (*q*).

Representation of class interests.

1280. Where at any time during the prosecution of the proceedings as regards accounts under a judgment or order it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings; and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings

(*n*) County Court Rules, Ord. 24, r. 1. As to accounts and inquiries generally, see title PRACTICE AND PROCEDURE. Service of notice of such judgment may be dispensed with and the judge may order the persons on whom such service is dispensed with to be bound by the judgment and they are so bound in the absence of fraud or non-disclosure of material facts (County Court Rules, Ord. 3, r. 31).

(*o*) County Court Rules, Ord. 24, r. 2. For form of summons, see County Court Rules, Appendix, Form 318.

(*p*) County Court Rules, Ord. 24, r. 3.

(*q*) *Ibid.*, r. 4.

SECT. 4. Judgment.

before him; and where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party must personally pay the costs of his own solicitor of and relating to the proceedings with respect to which such nomination has been made, and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated (*r*). Similarly, where the same solicitor is employed for two or more parties, the judge may at his discretion require that any of the said parties shall appear separately in person or be represented by a distinct solicitor, and adjourn such proceedings until such requirement is complied with (*s*).

Persons claiming under judgment for accounts to prove claims.

1281. Where a judgment or order is given or made directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement are excluded from the benefit of the judgment or order (*t*).

Evidence of books of account.

1282. Where an order directs accounts to be taken, any books of account in which the accounts required to be taken, or any of them, have been kept must, unless the court otherwise directs, be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised (*a*).

Verification of account by affidavit.

1283. Where any account is directed to be taken, the accounting party must, unless the court otherwise directs, make out his account and verify the same by affidavit. The items on each side of the account must be numbered consecutively, and the account referred to by the affidavit as an exhibit and left at the registrar's office (*b*).

Particulars of surcharge against accounting party.

1284. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received must give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner (*c*).

Account of personal estate.

1285. Every judgment or order for a general account of the personal estate of a testator or intestate must contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the court otherwise directs (*d*).

Directions for accounts to be numbered.

1286. Where by any judgment or order any accounts are directed to be taken or inquiries to be made, each such direction must be numbered so that, as far as may be, each distinct account and

(*r*) County Court Rules, Ord. 24, r. 5.
(*s*) *Ibid.*, r. 6.
(*t*) *Ibid.*, r. 7. Compare R. S. C., Ord. 55, r. 4, and cases thereunder; see title PRACTICE AND PROCEDURE.
(*a*) County Court Rules, Ord. 24, r. 8.
(*b*) *Ibid.*, r. 9.
(*c*) *Ibid.*, r. 10.
(*d*) *Ibid.*, r. 11.

inquiry may be designated by a number and such judgment or order must be in the prescribed form, with such variations as the circumstances of the case may require (*e*).

Form of advertisement for creditors.

1287. Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the court, which is issued pursuant to any order, must direct every such creditor or other person, within a time to be thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him, and at the time of directing such advertisement a time must be fixed for adjudicating on the claims (*f*).

Duties of creditor, next of kin, or legatee.

No creditor or other person need make any affidavit, or attend in support of his claim, except to produce his security, unless he is served with a notice requiring him to do so (*g*), and every creditor must produce or transmit to the registrar any security held by him at such time as is specified in the advertisement for that purpose as being the time appointed for adjudicating on the claims; and every creditor must, if required by notice in writing to be given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at such time as is specified in such notice (*h*). Similar provisions apply to a person claiming as heir-at-law, devisee, next of kin, or legatee, who must produce a pedigree or proof if required (*i*), and any creditor or person neglecting to comply with this provision cannot in the absence of an order by the court get any costs of proving his claim (*k*).

Evidence of claims.

1288. At the time appointed for adjudication upon the debts or claims the registrar must take the evidence of the accounting party upon them, and may thereupon, in his discretion, allow any of them without further proof, and may direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information, or evidence relating thereto, as he may think fit, and may, if he thinks fit, require any creditor or other person to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed may be adjourned to a time to be then fixed (*l*).

Notice of allowance of claims.

Notice of allowance must be given by the registrar to every creditor or other person whose claim or any part thereof has been allowed, and notice must also be given by him to every creditor or other person whose claim or any part thereof has not been allowed to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and also to attend at a time to be

(*e*) County Court Rules, Ord. 24, r. 12; and see County Court Rules, Appendix, Form 304.
(*f*) County Court Rules, Ord. 24, r. 13.
(*g*) *Ibid.*, r. 14.
(*h*) *Ibid.*, r. 15.
(*i*) *Ibid.*, r. 16.
(*k*) *Ibid.*, r. 17.
(*l*) *Ibid.*, r. 18; and see County Court Rules, Appendix, Form 319.

SECT. 4. Judgment.

therein named, being the time to which the adjudication thereon has been adjourned; and in case any creditor or other person does not comply with such notice, his claim, or such part thereof as aforesaid, may be disallowed (*m*).

Late claims.

1289. Any creditor or other person who has not previously sent in the particulars of his claim pursuant to advertisement may do so two days before any day to which the adjudication is adjourned (*n*); and if any claim is sent in after the time fixed by advertisement (except as provided in case of an adjournment) the registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he may think fit (*o*).

Creditor's costs.

1290. A creditor who has come in and established his debt under any judgment or order is entitled to the costs of so establishing his debt, and the sum to be allowed for such costs must be fixed by the court and must be added to the debt so established (*p*).

Allowances and interest

1291. In taking any account all just allowances must be made without any directions for that purpose in the order (*q*); and in the case of the debts of a deceased person interest must be computed on such debts as carry interest at that rate, and on all others at the rate of 4 per cent. per annum from the date of the judgment or order (*r*).

A creditor whose debt does not carry interest, who comes in and establishes the same under a judgment or order, is entitled to interest upon his debt at the rate of 4 per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the action or matter, the debts established, and the interest on such debts as by law carry interest (*s*).

Interest on legacies.

Where a judgment or order is made directing an account of legacies, interest must be computed on such legacies after the rate of 4 per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will (*t*).

Certificate of proceedings.

1292. The result of the proceedings before the registrar under any judgment or order must be stated in a certificate in writing signed by the registrar and presented to the judge (*a*), but any party may, before the proceedings before the registrar are concluded,

(*m*) County Court Rules, Ord. 24, r. 19; and see County Court Rules, Appendix, Forms 319, 320.
(*n*) County Court Rules, Ord. 24, r. 20.
(*o*) *Ibid.*, r. 21.
(*p*) *Ibid.*, r. 22.
(*q*) *Ibid.*, r. 23.
(*r*) *Ibid.*, r. 24.
(*s*) *Ibid.*, r. 25.
(*t*) *Ibid.*, r. 26.
(*a*) *Ibid.*, r. 27.

take the opinion of the judge upon any matter arising in the course of the proceedings (*b*).

Preparation and inspection of certificate.

The registrar must prepare his certificate seven days before the day appointed for presenting it, and must give notice by post to all parties to the action or matter that the certificate lies in his office for the inspection of any parties interested therein or affected thereby; and he must deliver a copy thereof to any person requiring one, upon payment of the costs thereof (*c*).

Form of certificate.

The certificate must not, unless necessary, set out the judgment or order or any documents or evidence or reasons, but must refer to the judgment or order, documents, and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded (*d*).

Reference to account in certificate.

Where an account is directed, the certificate must state the result of such account, and not set the same out by way of schedule, but must refer to the account verified by the affidavit filed, and must specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and must state what additions, if any, have been made by way of surcharge or otherwise. Where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and must then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates must be retained by the registrar. No copy of any such account need be taken by any party (*e*).

Effect of certificate.

Every certificate, with the accounts (if any) to be filed therewith, is binding on all the parties to the proceeding, unless discharged or varied upon application (*f*).

Application to vary certificate.

1293. Any party interested in or affected by the registrar's certificate who desires to have it varied must apply at the court on the day appointed for presenting the same, and the judge must thereupon hear and determine such application, and confirm or vary the certificate, and make such further order thereupon, and on further consideration of the action or matter, as he may think fit (*g*).

Order where no variation.

If no application is made to vary the certificate, it must be taken as confirmed, unless the judge otherwise orders; and the judge must, on the day appointed for the presentation of the same, make such order on further consideration of the action or matter as he may think fit (*h*).

Subsequent discharge or variation.

The judge may, if the special circumstances of the case

(*b*) County Court Rules, Ord. 24, r. 30.
(*c*) *Ibid.*, r. 31. For form of notice, see County Court Rules, Appendix, Form 322.
(*d*) County Court Rules, Ord. 24, r. 28.
(*e*) *Ibid.*, r. 29.
(*f*) *Ibid.*, r. 32.
(*g*) *Ibid.*, r. 33.
(*h*) *Ibid.*, r. 34. For form of order on further consideration, see County Court Rules, Appendix, Form 323.

SECT. 4. Judgment.

require it, upon an application, direct a certificate to be discharged or varied at any time after it has become binding on the parties (*i*).

SUB-SECT. 6.—*Judgment for or against Executors and Administrators.*

Generally.

1294. An executor or administrator can sue and be sued as if he were a party, and judgment and execution in such a case issue in a manner analogous to the practice of the High Court (*k*).

Waste of assets.

1295. Where an executor or administrator is sued and is charged with waste in the summons, if the judge is of opinion that the defendant has wasted the assets, the judgment must be that the debt or damages and costs be levied *de bonis testatoris, si,* etc., *et si non, de bonis propriis ;* and the non-payment of the amount of the demand immediately on the judge finding such demand to be correct, and that the defendant is chargeable in respect of assets, is conclusive evidence of wasting to the amount with which he is so chargeable (*l*).

Admission of representative character; denial of demand.

1296. Where a defendant, sued as an executor or administrator, admits his representative character, and only denies the demand, if the plaintiff proves the demand the judgment must be that the demand and costs be levied *de bonis testatoris, si,* etc., *et si non,* as to the costs, *de bonis propriis* (*m*).

Proof of total or partial administration and demand.

Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment must be to levy the costs of proving the demand *de bonis testatoris, si,* etc., *et si non, de bonis propriis ;* and as to the demand, judgment of assets, *quando acciderint ;* and the plaintiff must pay the defendant's costs of proving the administration of assets, unless the court otherwise orders (*n*).

Failure to prove total or partial administration.

Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does not prove the administration alleged, the judgment must be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si,* etc., *et si non,* as to the costs, *de bonis propriis,* and as to the residue of the demand, if any, judgment of assets, *quando acciderint* (*o*).

(*i*) County Court Rules, Ord. 24, r. 35.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 95. As to judgment for and against executors and administrators generally, see title EXECUTORS AND ADMINISTRATORS.

(*l*) County Court Rules, Ord. 30, r. 4; and see County Court Rules, Appendix, Form 238. A plaintiff who desires judgment in such form must sue on a *devastavit,* and not merely claim against the defendant as executor (*Lacons* v. *Warmoll,* [1907] 2 K. B. 350, C. A.).

(*m*) County Court Rules, Ord. 30, r. 5; and see County Court Rules, Appendix, Form 239.

(*n*) County Court Rules, Ord. 30, r. 6; and see County Court Rules, Appendix, Form 240.

(*o*) County Court Rules, Ord. 30, r. 7; and see County Court Rules, Appendix, Form 241.

Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, and proves the administration alleged, the judgment must be of assets, *quando acciderint*, and the plaintiff must pay the defendant's costs of proving the administration of assets, unless the court otherwise orders (*p*).

Where demand admitted and administration not proved.

Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment must be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris si*, etc., *et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint* (*q*).

Judgment against assets.

1297. Where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff may issue a summons according to the prescribed form; and if it appears that assets have come to the hands of the executor or administrator since the judgment, the judge may order that the debt, damages, and costs be levied *de bonis testatoris si*, etc., *et si non*, as to the costs, *de bonis propriis:* the party applying may charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in a *devastavit* summons; and the judge may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris si*, etc., *et si non*, *de bonis propriis* (*r*).

Plaintiff's costs of disproving defence.

1298. In actions against executors or administrators for which no special provision is made, if the defendant fails as to any of his defences, the judgment must, unless the court otherwise orders, be for the plaintiff as to his costs of disproving such defence, and such costs must be levied *de bonis testatoris, si*, etc., *et si non*, *de bonis propriis* (*a*).

SUB-SECT. 7.—*Registry of Judgments.*

Registration of judgments.

1299. A register of every county court judgment for the sum of £10 and upwards, and every such other judgment or order of the county court as may be prescribed (*b*), must be kept according to directions of the Treasury as to place and regulations. Certain

(*p*) County Court Rules, Ord. 30, r. 8; and see County Court Rules, Appendix, Form 242.

(*q*) County Court Rules, Ord. 30, r. 9; and see County Court Rules, Appendix, Form 243.

(*r*) County Court Rules, Ord. 30, r. 10. For form of summons, see County Court Rules, Appendix, Form 244. For form of judgment on a *devastavit* since judgment, see *ibid.*, Form 246.

(*a*) County Court Rules, Ord. 30, r. 12.

(*b*) These include notes of every judgment or order in an Admiralty or equitable action and of payment into court by trustees and others, which must be sent to the registrar in London within ten days of their making (County Court Rules, Ord. 36, r. 2).

SECT. 4. Judgment.

fees are charged for the inspection of the register, and the proceeds of the fees are applied by the Treasury in paying the expenses of maintaining the register, any surplus after such payment being paid over to the credit of the Consolidated Fund (*c*). The same provisions apply to judgments of the City of London Court (*d*).

The publication of an extract from the register is privileged (*e*).

SECT. 5.—*New Trial.*

Power of judge to order new trial.

1300. The judge in any case whatever tried before him has the power, if he thinks just, to order a new trial to be had on such terms as he thinks reasonable, and in the meantime may stay the proceedings (*f*). The power of the judge to grant a new trial is no greater than that possessed by the High Court in actions tried in that court (*g*), and the grounds for granting a new trial are the same in the county court as in the High Court (*h*). This power includes a case in which the judge has decided that he has no jurisdiction and has ordered the case to be struck out (*i*). The judge has no power on an application for a new trial to enter judgment for the applicant (*k*), nor has he power after disposing of the application to rehear the case at a subsequent court (*l*). Where he *primâ facie* refuses the application and either gives leave for a renewal thereof (*m*) or withdraws his refusal immediately thereafter before it has been entered on the minutes (*n*), he may entertain the application and grant a new trial.

New trial with jury.

The judge may in his discretion make it a condition of granting a new trial that it shall take place with a jury, and either party may demand a jury at the new trial although the former trial did not take place with a jury (*o*).

Procedure on application for new trial.

1301. An application for a new trial, or to set aside proceedings, may be made and determined on the day of trial, if both parties be present, or at the first court held after the expiration of twelve clear days from the day of trial. The applicant must, seven days before

(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 183. The register is kept by the Registrar of County Courts Judgments in London. For table of fees, see Yearly County Court Practice, 1909, p. 953.

(*d*) County Court Rules, Ord. 36, r. 1.

(*e*) *Searles* v. *Scarlett*, [1892] 2 Q. B. 56, C. A.

(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 93. The judge has power to order a new trial on terms where a defendant does not appear, and the case has been tried in his absence (see p. 528, *ante*), but these provisions do not apply to such a case (County Court Rules, Ord. 31, r. 1).

(*g*) *Murtagh* v. *Barry* (1890), 24 Q. B. D. 632.

(*h*) As to the grounds for granting a new trial in the High Court, see title PRACTICE AND PROCEDURE.

(*i*) *Lister* v. *Wood* (1889), 23 Q. B. D. 229, C. A.

(*k*) *Robinson* v. *Fawcett and Firth*, [1901] 2 K. B. 325.

(*l*) *Great Northern Rail. Co.* v. *Mossop* (1855), 17 C. B. 130.

(*m*) *R.* v. *Greenwich County Court Judge* (1888), 37 W. R. 132, C. A.

(*n*) *Barton* v. *Titmarsh* (1880), 49 L. J. (Q. B.) 573, C. A.

(*o*) County Court Rules, Ord. 31, r. 2; *R.* v. *Harwood* (1853), 22 L. J. (Q. B.) 127; *Ford* v. *Taylor* (1877), 3 C. P. D. 21. Where in making such an order the judge imposed a term that the defendant should pay the plaintiff the costs of the first trial, the acceptance of such costs by the plaintiff was held to be a waiver of his right to object to the order (*Sparrow* v. *Reed* (1848), 5 Dow. & L. 633).

the holding of such court, deliver to the registrar at his office, and also give to the opposite party by serving the same personally, or by leaving the same at his place of abode or place of business, a notice in writing signed by himself or his solicitor, stating that such an application is intended to be made at such court, and setting forth shortly the grounds of such intended application. The notice does not operate as a stay of proceedings unless the judge otherwise orders. If any money paid into court under any execution or order in the action has not been paid out at the time when such notice in writing is given to the registrar, the registrar must retain the same to abide the event of such application, or until the judge otherwise orders; and if no such application is made, the money must, if required, be paid over to the party in whose favour the order was made, unless the judge otherwise orders (*p*). The provision as to notice is only directory (*q*), but any application not conforming with these provisions can only be made by leave of the judge and upon terms imposed by him (*r*).

New trial of actions originally transferred for trial under extended jurisdiction.

1302. In an action where the amount claimed exceeds £50 by virtue of the extended jurisdiction conferred by the County Courts Act, 1903 (*s*), and the action has been transferred for trial to a foreign court under the provisions of transfer of such actions (*t*), the following provisions apply. The application must be made to the foreign court, and when granted the new trial must take place there (*a*). The application does not operate as a stay of proceedings unless the judge otherwise orders (*b*). If notice of the application is given before the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court, the registrar of the foreign court must, unless proceedings are stayed, transmit the notice to the registrar of the home court with the other documents in the action; and if proceedings are stayed, the registrar of the foreign court must retain the documents in the action until the application is disposed of (*c*). If notice of an application for a new trial is given after the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court, the registrar of the foreign court must forthwith transmit the notice to the registrar of the home court; and if proceedings are stayed he must give notice of such stay to the registrar of the home court (*d*). Where the documents in the action have been transmitted to the registrar of the home court, he must in sufficient time before the hearing of the application retransmit the documents to the registrar of the foreign court for use on such application (*e*).

(*p*) County Court Rules, Ord. 31, r. 1. For form of order for new trial, see County Court Rules, Appendix, Form 154.
(*q*) *Carter* v. *Smith* (1855), 4 E. & B. 696.
(*r*) County Court Rules, Ord. 31, r. 1.
(*s*) 3 Edw. 7, c. 42.
(*t*) See p. 483, *ante*.
(*a*) County Court Rules, Ord. 22A, r. 26A (1).
(*b*) *Ibid.*, r. 26A (2).
(*c*) *Ibid.*, r. 26A (3).
(*d*) *Ibid.*, r. 26A (4).
(*e*) *Ibid.*, r. 26A (5).

SECT. 5. New Trial.

When the application for a new trial has been heard or otherwise disposed of, if the application is refused or abandoned the registrar of the foreign court must proceed as in the case when an action under the same circumstances is tried and disposed of (*f*), and if the application is granted he must retain the documents in the action, and after the second trial he must proceed as above (*g*).

Disposal of application and effect thereof.

Where notice of the application is given, if any money paid into the foreign court and certified to the registrar of the home court, or any money paid into the home court under any execution or order in the action, has not been paid out by the registrar of the home court at the time when he receives notice of the application, the registrar of the home court must retain the same to abide the result of the application, or until the judge otherwise orders; and if the application is not made, such money must, if required, be paid by the registrar of the home court to the parties entitled thereto, unless the judge otherwise orders (*h*).

Money in "foreign" court to be paid to "home" court.

Appeal.

1303. An appeal lies against the order of the judge granting (*i*) or refusing (*k*) a new trial.

SECT. 6.—*Execution.*

SUB-SECT. 1.—*In General.*

General power to issue execution.

1304. The county court possesses power to issue execution against the goods and chattels of a party against whom a judgment or order has been given, and, by the appointment of a receiver (*l*), against his equitable interests; but it possesses no power to issue execution against land (*m*).

It can further enforce its judgments and orders by the attachment of debts due from a third party to the judgment debtor (*n*), and in certain cases ordering the specific delivery of possession of land (*o*) or goods (*p*); and, lastly, enforcement of orders for payment may be effected against the person of a debtor by committing him to prison, if it be proved to the judge that he has, or has had subsequently to the order, means to comply therewith and has neglected to do so (*q*).

(*f*) See p. 485, *ante*.
(*g*) County Court Rules, Ord. 22A, r. 26A (6).
(*h*) *Ibid.*, r. 26A (7).
(*i*) *Murtagh* v. *Barry* (1890), 24 Q. B. D. 632.
(*k*) *Dingor* v. *Mathews* (1889), 65 L. T. 748, n.; and see p. 602, *post*.
(*l*) Upon an application for the appointment of a receiver, the judge, in determining whether it is just or convenient, must have regard to the amount of the debt and costs claimed, the amount which may probably be obtained by the receiver, and the probable costs of his appointment (County Court Rules, Ord. 13, r. 13; and compare R. S. C., Ord. 50, r. 15A). Under the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 89, a county court has power to appoint a receiver for the purpose of execution against equitable interests in land (*R.* v. *Selfe*, [1908] 2 K. B. 121). As to receivers generally, see p. 505, *ante*.
(*m*) But under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 151, a judgment of a county court may be removed into the High Court, through which means execution may be had against land; see p. 560, *post*.
(*n*) See p. 570, *post*.
(*o*) See p. 568, *post*.
(*p*) See p. 579, *post*.
(*q*) See title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 337 *et seq.*

Execution on default of payment under judgment or order.

1305. Where a judgment or order has been given for the payment of money, and default has been made in payment according to the terms thereof, the amount is recoverable by execution against the goods of the party against whom such judgment or order has been made (*r*). Every order of the court in any action or matter may be enforced in the same manner as a judgment to the same effect (*s*), and execution may issue for costs of an action as well as for an amount recovered by a judgment (*t*).

Order for examination of debtor.

1306. A judgment or order for the recovery or payment of money may be enforced by the party entitled to enforce it on application to the court for an order that the debtor liable under such judgment or order, or in the case of a corporation that one of its officers, be orally examined before the court as to what debts are owing to the debtor, and whether the debtor has any and what other means of satisfying the judgment or order. And the court may make an order for the attendance and examination of such debtor, including a married woman against whom a judgment has been obtained in respect of her separate estate (*a*), or any other person in the nature of an officer (*b*) of a corporation, where a corporation is the judgment debtor (*c*), or a garnishee against whom an order absolute has been made (*d*), and for the production of any books and documents (*e*).

Service and effect of order for examination.

Where an order is made under these provisions a sealed copy, indorsed with a notice in the prescribed form (*f*), must be served upon the person to be bound by it. The copy so indorsed must be issued by the registrar for service, on the application of the party entitled to its benefit. By leave of the registrar it may be issued to the applicant or his solicitor and served by any person by whom a default summons may be served (*g*), but in default of such leave it must be issued to and served by a bailiff. Service must in all cases be personal, unless the judge for good cause makes an order for substituted service (*h*). Any person wilfully disobeying an order for attendance and examination or the production of any books or documents as above, to whom payment has been made or tendered

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 146; County Court Rules, Ord. 25, r. 1. As to the preparation and service of an order or judgment, see p. 535, *ante*.

(*s*) County Court Rules, Ord. 25, r. 2; and compare R. S. C., Ord. 42, r. 24.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113.

(*a*) County Court Rules, Ord. 25, r. 71 (4); *Hood Barrs* v. *Heriot*, *Ex parte Blyth*, [1896] 2 Q. B. 338, C. A.

(*b*) For the case of a past officer of a corporation, see *Société Générale du Commerce et de l'Industrie en France* v. *Farina* (*Johann Maria*) *& Co.*, [1904] 1 K. B. 794, C. A.

(*c*) *Jeffris* v. *Tomlinson* (1886), 3 T. L. R. 193.

(*d*) *Cowan* v. *Carlill* (1885), 33 W. R. 583.

(*e*) County Court Rules, Ord. 25, r. 71 (1); and compare R. S. C., Ord. 42, r. 32.

(*f*) County Court Rules, Appendix, Form 346.

(*g*) Under County Court Rules, Ord. 7, r. 33; see pp. 473 *et seq.*, *ante*.

(*h*) County Court Rules, Ord. 25, r. 71 (2); as to substituted service, see p. 469, *ante*.

SECT. 6. Execution.

of a sum reasonably sufficient (*i*) to cover travelling expenses (not exceeding the scale of allowances for the travelling expenses of witnesses prescribed by the County Court Rules), will be deemed guilty of contempt of court and dealt with accordingly (*k*). The costs of any application for examination, and of proceedings arising from or incidental to them, are in the discretion of the court (*l*).

Præcipe and warrant of execution.

1307. The registrar, before issuing any warrant of execution, may require the person applying for the same to produce the plaint note or summons issued in the action, or a duplicate, and to furnish a præcipe containing the number of the plaint and the residence or place of business and description of the person against whose goods the warrant is to be issued (*m*). Thereupon, where a defendant has made default in payment of the whole amount awarded by the judgment or order, or of an instalment thereof, a warrant of execution may issue against his goods without leave; and such execution is for the whole amount of the judgment or order and costs then remaining unsatisfied, or, in the case of an order for payment by instalments, for such portion thereof as the court orders, either at the time of making the original order or at any subsequent time (*n*).

Separate warrants for debt and costs.

But where judgment is given or an order made for the payment of over £20 and costs, and payment is directed forthwith or within fourteen clear days, and costs to be taxed and paid forthwith, or within fourteen clear days after taxation, execution may, in default, issue for the sum and costs, after the latter have been taxed; or, if default is made in payment of the money before the costs have been taxed, separate warrants may issue for the money, on default, and for the costs after taxation and default; but the second warrant must only be for costs, and must not be issued until the expiration of eight days from the issue of the first warrant (*o*).

Enforcement of judgment by married woman.

1308. When a married woman sued only in her own name obtains a judgment or order on the ground of coverture, and is awarded costs, she may enforce payment of such costs in her own name (*p*).

Execution after cross judgments.

1309. When there are cross judgments between the parties execution is taken out by that party only who has obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum. Satisfaction is then entered both for

(*i*) The amount is within the discretion of the registrar (*Rendell* v. *Grundy*, [1895] 1 Q. B. 16, C. A.).

(*k*) County Court Rules, Ord. 25, r. 71 (3).

(*l*) County Court Rules, Ord. 25, r. 72; and see County Court Rules, Ord. 12, r. 11 (4), (5), (6), which apply to such costs; compare also R. S. C., Ord. 42, r. 34.

(*m*) County Court Rules, Ord. 25, r. 7.

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 149; County Court Rules, Ord. 25, r. 8; County Court Rules, Appendix, Forms 163, 164A, 165.

(*o*) County Court Rules, Ord. 25, r. 9.

(*p*) *Ibid.*, r. 4.

the remainder as well as the smaller sum, but if both sums are equal satisfaction is entered upon both judgments (*q*). The same rules apply both when there are cross actions, or a claim and counterclaim, and when there are cross judgments in separate actions; and in the latter case even where the party against whom judgment for the larger sum has been obtained has paid such sum into court (*r*).

Limitation of time as to execution.

1310. No execution can issue upon any judgment but within twelve years from the date of such judgment, or the last acknowledgment of the right to it given in writing (*s*).

SUB-SECT. 3.—*Where Leave required.*

1311. Leave to issue execution is required in the following cases:—

Where no payment on judgment two years old.

(1) Where no payment into court has been made on a judgment or order obtained twenty-four months previously; but no notice to the debtor before applying for leave is necessary, although such leave must be expressed on the warrant under the seal of the court (*t*).

Against partner who has not admitted or been adjudged partner.

(2) Where under a judgment against a firm the party who has obtained the judgment claims to issue execution against a person as partner who has neither admitted before the court that he is a partner nor been adjudged one, or who has not been served with the summons as a partner or person sought to be made liable (*a*). In this case two clear days' notice of intention to apply for leave must be given. The court may give leave if the liability is not disputed, or, if the liability is disputed, may order the liability to be determined by an action commenced by plaint and summons in the ordinary way (*b*).

Where change of parties after judgment.

(3) Where any change has taken place after judgment by death, assignment, or otherwise in the parties entitled to take proceedings to enforce the judgment or order, or in the parties liable to such proceedings (*c*).

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 150.

(*r*) *Ward* v. *Haddrill*, [1904] 1 K. B. 399. And this notwithstanding that the solicitor for the party obtaining judgment for the larger sum claimed a lien on the same for his costs (*ibid.*).

(*s*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8; *Hebblethwaite* v. *Peever*, [1892] 1 Q. B. 124; *Jay* v. *Johnstone*, [1893] 1 Q. B. 189, C. A.; and see titles EXECUTION; LIMITATION OF ACTIONS.

(*t*) County Court Rules, Ord. 25, r. 10.

(*a*) Where it was alleged that a person was or had held himself out as a partner in the defendant firm, an issue as to that question was ordered to be tried (*Davis* v. *Hyman & Co.*, [1903] 1 K. B. 854, C. A.). Where a person had, to the plaintiff's knowledge, ceased to be a member of the defendant firm before the commencement of the action, and did not appear to the writ or admit he was a partner, and had not been adjudged to be one, the plaintiff, in order to be entitled to obtain leave to issue execution, or to have the question of liability tried, under R. S. C., Ord. 48A, r. 8, must serve him with a writ in accordance with the proviso to *ibid.*, r. 3 (*Wigram* v. *Cox*, [1894] 1 Q. B. 792). See, further, County Court Rules, Ord. 7, r. 15; and compare R. S. C., Ord. 48A, r. 3.

(*b*) County Court Rules, Ord. 25, r. 11; and compare R. S. C., Ord. 48A, r. 8.

(*c*) County Court Rules, Ord. 25, r. 14; and compare R. S. C., Ord. 42, r. 23. For form of order to proceed after death of a plaintiff subsequent to judgment,

SECT. 6. Execution.

(4) Where a husband is either entitled or liable to proceedings upon a judgment or order for or against a wife (*d*).

Judgment against company.

(5) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment against such company, or against a public officer or other person representing the company (*e*).

Attachment against officers of corporation.

(6) For issue of a writ of attachment against the directors or other officers of a corporation where any judgment or order against the corporation has been wilfully disobeyed (*f*). But an order of attachment will not be issued against a director until he has been personally served with the order which has been disobeyed (*g*).

Third party not appearing.

(7) Where judgment is entered against a third party in default of appearance (*h*).

Application by affidavit.

In cases (3), (4), and (5) the party alleging himself to be entitled to enforce the judgment or order may apply to the court for leave on affidavit, and the court may, if satisfied that the party applying is entitled, give leave, or may order any question necessary to determine the rights of the parties to be tried in an action commenced by plaint and summons in the ordinary way, and may impose such terms as to costs or otherwise as may be just (*i*). Any order made in these cases *ex parte* must be drawn up and served by post or otherwise on the persons to be affected, and proceedings must not issue until six clear days at least after service (*k*).

Application where several judgments.

Where, also, in these cases—(3), (4), and (5)—a party alleges himself to be entitled by reason of one and the same change or other cause to enforce the judgments or orders in more actions or matters than one, or to enforce a judgment or order against more persons than one, he may make one application only for leave to issue the necessary process in all or any of such actions or matters, or against all or any of such persons, specifying in a schedule to such application all the actions or matters in respect of which such application is made, or all the persons in respect of whom such application is made; and one order only may be made on such application in respect of all or any of such actions or matters, or

see County Court Rules, Appendix, Form 158. For form of order to proceed after change of interest by assignment or otherwise subsequent to judgment, see *ibid.*, Form 160. Where one of two partners, in whose favour judgment has been given, dies, leave to issue execution is given to the survivor (*Davis & Son* v. *Andrews*, [1884] W. N. 94). Leave also is given to executors on production of the probate (*Mercer* v. *Lawrence* (1878), 26 W. R. 506). But a trustee in bankruptcy of a judgment creditor must get himself made a party to the action before leave can be granted to him (*Re Clements, Ex parte Clements*, [1901] 1 Q. B. 260).

(*d*) County Court Rules, Ord. 25, r. 14.

(*e*) *Ibid.*

(*f*) *Ibid.*, r. 3; and compare R. S. C., Ord. 42, r. 31. As to what amounts to wilful disobedience, see *Fairclough* v. *Manchester Ship Canal Co.*, [1897] W. N. 7, C. A.

(*g*) *McKeown* v. *Joint Stock Institute, Ltd.*, [1899] 1 Ch. 671. For executions against corporations generally, see titles CORPORATIONS, p. 396, *ante*; EXECUTION.

(*h*) County Court Rules, Ord. 11, r. 3 (b); and compare R. S. C., Ord. 16, rr. 50, 51.

(*i*) County Court Rules, Ord. 25, r. 14.

(*k*) *Ibid.*, r. 15.

all or any of such persons. In serving notice of any such order on any person affected by it, it is sufficient to set forth that part only of the order as affects such person, without setting forth the rest of it (*l*).

SUB-SECT. 4.—*The Warrant.*

Registrar to issue warrant.

1312. The registrar, at the request of the party prosecuting a judgment or order, must issue under the seal of the court a warrant of execution, in the nature of a writ of *fieri facias*, to the high bailiff, who is then empowered to levy the judgment debt and the costs of the execution by distress and sale of the goods of the judgment debtor wherever they may be found within the district of the court (*m*).

Entry of time of application.

The precise time when the application was made to him must be entered by the registrar in his book and on the warrant. When more than one warrant is delivered to the high bailiff to be executed, he must execute them in the order of the times so entered (*n*).

Contents of warrant.

The registrar must further insert in the warrant the amount to be levied and the fees for the execution of the warrant (*o*), distinguishing the amount adjudged to be paid and remaining due, and the fees for the issuing and execution of the warrant. He must also prepare and deliver to the bailiff with the warrant a notice in the prescribed form (*p*), which the bailiff, upon levying, must deliver to the judgment debtor or leave at the place where the execution is levied (*q*).

Concurrent warrants.

Warrants of execution against goods may be issued concurrently into one or more districts, provided that the costs of more than one warrant must not be allowed against the execution debtor unless by order of the court (*r*).

Duplicate warrant.

In the event of any warrant being lost or destroyed, a duplicate may be issued upon proof by affidavit or otherwise to the satisfaction of the registrar of such loss or destruction (*s*).

Duration and renewal of warrant.

1313. The warrant must bear date of the day on which it is issued, and if unexecuted it remains in force for one year only from and exclusive of such date unless renewed. But at any time before its expiration it may by leave of the court be renewed by the party issuing it for one year from the date of the renewal, and so on from time to time during the continuance of the renewed warrant. The fact of the renewal must be indorsed on the warrant according to the form prescribed (*t*), and a renewed warrant is entitled to priority

(*l*) County Court Rules, Ord. 25, r. 16; and County Court Rules, Appendix, Forms 159, 161. As to service when a party acts by a solicitor, see County Court Rules, Ord. 23, r. 6.

(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 146.

(*n*) *Ibid.* As to priority of executions issuing out of the High Court and the county court, see p. 559, *post.*

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 155.

(*p*) County Court Rules, Appendix, Form 162.

(*q*) County Court Rules, Ord. 25, r. 17.

(*r*) *Ibid.*, r. 18.

(*s*) County Court Rules, Ord. 54, r. 26. These warrants should be marked "Duplicate" in red ink in the corner.

(*t*) County Court Rules, Appendix, Form 163A.

SECT. 6. Execution.

according to the time of the application to the registrar (*a*) for the original issue (*b*).

Costs of warrant.

1314. Any fees payable on renewal of a warrant may be allowed as costs of the execution, and if so allowed the amount and the fact of such allowance must be entered on the warrant (*c*).

Unless otherwise provided, the costs of warrants, whether executed or unexecuted or unproductive, must be allowed against the execution debtor, unless the judge otherwise directs (*d*).

SUB-SECT. 5.—*Execution against a Partnership.*

Execution on partnership property.

1315. Where a judgment or order is against a firm execution may issue—

(1) Against any property of the partnership;

(2) Against any person who has admitted before the court in the proceedings in which the judgment or order was obtained that he was a partner when the cause of action accrued, or who has been adjudged to be liable as a partner;

(3) Against any person who was individually served with the summons as a partner or a person sought to be made liable (*e*) and who failed to appear at the trial (*f*).

To issue execution against any other person as a member of the firm requires leave of the court (*g*).

Partner out of England and Wales.

Except as against any property of the partnership, a judgment against a firm will not affect any member who was out of England and Wales when the summons was issued, unless he has been made a party to the action by service in the manner prescribed (*h*), or has been served within England or Wales after the summons in the action was issued (*i*).

Order charging partner's interest where judgment against him personally.

1316. A writ of execution may not issue against any partnership property except on a judgment against the firm. But on the application by summons of a judgment creditor of any partner the court may (*k*) make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest, and may by the same

(*a*) Where the registrar is the high bailiff, the time of application is the date from which property in the goods of the execution debtor is bound under the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 26 (*Murgatroyd* v. *Wright*, [1907] 2 K. B. 333).

(*b*) County Court Rules, Ord. 25, r. 6.

(*c*) *Ibid.*, r. 6B.

(*d*) *Ibid.*, r. 19.

(*e*) *Davis* v. *Hyman & Co.*, [1903] 1 K. B. 854, C. A.; *Wigram* v. *Cox, Sons, Buckley & Co.*, [1894] 1 Q. B. 792; and see note (*a*), p. 553, *ante*.

(*f*) County Court Rules, Ord. 25, r. 11; and compare R. S. C., Ord. 48A, r. 8.

(*g*) County Court Rules, Ord. 25, r. 11; and as to leave of the court, see p. 553, *ante*.

(*h*) County Court Rules, Ord. 7, r. 41; see p. 553, *ante*.

(*i*) County Court Rules, Ord. 25, r. 11.

(*k*) Where an application to the High Court for a receiver under the Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 23 (2), had been made and granted, and subsequently an application by another creditor for a receiver was made to a county court, it was held that the fact that an application could be made to either court was a sufficient reason why the county court judge should use his discretion to make the order or not (*Edmondson* v. *Harrison* (1896), 41 Sol. Jo. 128).

or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership (*l*), and direct all accounts and inquiries and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require. And these provisions apply in the case of a cost-book company as if the company were a partnership (*m*).

Application for order and notice thereof.

Every application by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under the above provisions, and for other orders thereby authorised, must be made to the court on notice. The notice must be served in the case of a partnership, other than a cost-book company, on the judgment debtor and his partners, or such as are in England and Wales, or in the case of a cost-book company on the judgment debtor and the purser of the company. Such service is good service on all the partners or on the cost-book company, and all orders made on these applications must be similarly served (*n*).

Redemption of partner's interest.

1317. Where a judgment creditor of a partner has obtained an order charging the partner's interest in the partnership property, the other partners may at any time redeem the interest charged, or, in case of a sale being directed, purchase it (*o*).

Notice of application for redemption.

An application by a partner of the judgment debtor under these provisions must be made to the court on notice. This notice must be served in the case of a partnership, other than a cost-book company, on the judgment creditor and the judgment debtor, and on such other partners as do not concur in the application and are in England and Wales; or in the case of a cost-book company on the judgment creditor and judgment debtor and the purser of the company. Such service is good service on all the partners, or on the cost-book company, and all orders made on these applications must be similarly served (*p*).

SUB-SECT. 6.—*Effect and Execution of the Warrant.*

Effect of warrant of execution.

1318. A writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ is delivered to the officer charged with its enforcement to be executed. It is the duty of that officer, without fee, upon the receipt of any such writ to indorse upon the back of it the hour, day, month, and year when he received it. But the writ will not prejudice the title to goods acquired by any person in good faith and for valuable consideration, unless such person had, at the time when he acquired

(*l*) And this applies to a partnership carrying on business partly in England and partly abroad (*Brown, Janson & Co.* v. *Hutchinson & Co.*, [1895] 1 Q. B. 737, C. A.).

(*m*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 23; see, further, title PARTNERSHIP.

(*n*) County Court Rules, Ord. 25, r. 12; compare R. S. C., Ord. 46, r. 1A.

(*o*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 23 (3).

(*p*) County Court Rules, Ord. 25, r. 13; compare R. S. C., Ord. 46, r. 1B.

SECT. 6. Execution.

his title, notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized had been delivered to, and remained unexecuted in, the hands of any officer charged with its enforcement (*q*). Where the registrar is high bailiff the time from which the warrant of execution binds the property in the goods is the time at which application for the issue of the writ is made to the registrar (*r*), except when the court of issue is different from the court of execution, in which case the property in the goods is bound from the time at which the registrar of the court of execution issues the warrant to the high bailiff of that court (*s*).

Execution of warrant by high bailiff.

1319. The high bailiff must execute every warrant delivered to him as soon as possible. He must enter in the proper book every warrant which he has been required to execute, and from time to time state in it what he has done under each warrant, and, if any one is not executed within a month from the day of delivery to him, why it has not been executed. At all reasonable times he must give to a suitor or his solicitor all information which he may reasonably require as to the execution or non-execution of any warrant issued at his instance (*t*).

No execution on a holiday.

1320. A warrant may not be executed on a Sunday, Christmas Day, Good Friday, or any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving. Nor need a warrant be granted on any day on which the offices of the courts need not be open under the rules or under any order of the Lord Chancellor (*a*).

Limitation of district for execution.

1321. The warrant may be executed within 500 yards of the boundary of the district of the court from which it issued by the bailiff of that court, or, if the judge of that court so orders, by such bailiff within the district of any other court (*b*). The bailiff, upon levying, must deliver to the judgment debtor, or leave at the place where the execution is levied, a notice, prepared by the registrar (*c*)

(*q*) Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 26.

(*r*) So, where a warrant of execution, application for which was made before the completion of a bill of sale, was not delivered to the officer for enforcement till after such completion, it was held that the warrant had priority over the bill of sale (*Murgatroyd* v. *Wright*, [1907] 2 K. B. 333).

(*s*) Where a warrant of execution, issued out of a county court in the district of which the judgment debtor had no goods, was sent by the high bailiff of that court to the registrar of another county court, in the district of which the judgment debtor had goods, an assignment of such goods made after the delivery to the high bailiff of the court of original issue, but before the issue by the registrar of the other court to the high bailiff of that court, was held good against the judgment creditor (*Birstall Candle Co.* v. *Daniels*, [1908] 2 K. B. 254). As to the general law on the effect of writs of execution, and the position of assignees, see title EXECUTION.

As to the effect of bankruptcy on judgment creditors, see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 271.

(*t*) County Court Rules, Ord. 2, r. 33.

(*a*) County Court Rules, Ord. 54, r. 19; Ord. 1, r. 5. But these provisions do not apply to a summons *in rem* or a warrant of arrest in an Admiralty action (see title ADMIRALTY, Vol. I., p. 130).

(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 77.

(*c*) See p. 555, *ante*.

and in the form provided (*d*), stating the amount to be levied and the scale of fees for keeping possession, appraisement, and sale; giving notice that a sale of the goods will not be made until after the end of five days from the day of seizure, unless they are of a perishable nature, or the debtor so requests; informing the debtor that the bailiff will supply an inventory of all goods removed, and that notice of the place of sale will be given at least twenty-four hours before the time fixed; and also explaining that if the goods are sold the bailiff is required, on request, to supply an account of the sale, and the application of the proceeds.

Possession fees.

1322. The high bailiff's fee for keeping possession of goods seized (*e*), called a possession fee, is not payable where the execution is paid out at the time of the levy. But if the bailiff necessarily remains in possession for more than half an hour, and the execution is paid out on the day of levy, the possession fee is charged for that day (*f*).

Power of bailiff to break and enter.

1323. The bailiff, in effecting execution, may not break open the outer doors of the debtor's dwelling-house (*g*), but being once inside he may break open inner doors (*h*). And all constables and other peace officers within their several jurisdictions are to aid in the execution of every such warrant (*i*).

Payment over by high bailiff of proceeds.

1324. Every high bailiff levying or receiving any money by virtue of the process of any county court must, except where he is by statute required to retain it (*k*), pay it over to the registrar of the court of which he is high bailiff within twenty-four hours from his receiving it. The registrar must indorse the warrant with a memorandum of the receipt, and the high bailiff must file the process and retain it in his custody (*l*).

Priority of executions in High Court and county court.

1325. When a writ against the goods of a party has been issued from the High Court, and a warrant against the goods of the same party has been issued from a county court, the right to the goods seized is determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application to the registrar for the issue of the warrant to be executed. The sheriff, on demand, must, by writing signed by any clerk in the office of the under-sheriff, inform the high bailiff of the precise time of the

(*d*) County Court Rules, Appendix, Form 162.

(*e*) Court Fees, Sched. B, Part. I.

(*f*) County Court Rules, Ord. 25, r. 20. Where the high bailiff levied under three warrants upon different goods of the debtor, although on the same premises, and possession under all three warrants was held by the same person, he was held entitled to possession fees under each warrant (*Re Morgan, Ex parte Board of Trade*, [1904] 1 K. B. 68).

(*g*) *Semayne's Case* (1604), 5 Co. Rep. 91; *Hodder* v. *Williams*, [1895] 2 Q. B. 663, C. A.

(*h*) *Hutchison* v. *Birch* (1812), 4 Taunt. 619. As to the general law of the rights and duties of bailiffs in executing writs, see title EXECUTION.

(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 146.

(*k*) See Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11 (2), and title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 234.

(*l*) County Court Rules, Ord. 2, r. 34.

SECT. 6. Execution.

delivery of the writ, and the bailiff, on demand, must show his warrant to the sheriff's officer, and such writing purporting to be so signed, and the indorsement on the warrant, are respectively sufficient justification for any high bailiff or sheriff to act upon (*m*).

What goods bailiff may seize.

1326. The bailiff may, by virtue of the warrant, seize any of the goods and chattels of the judgment debtor, except the wearing apparel and bedding of the debtor or his family, and the tools and implements of his trade, to the value of £5, which are to that extent protected. He may also seize any money or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to the judgment debtor (*n*).

High bailiff to hold cheques, bills etc.

The high bailiff must hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been seized under the warrant, as security for the amount directed to be levied, or for so much as shall not have been otherwise levied or raised, for the benefit of the plaintiff. The latter may sue in the name of the defendant, or any other person in whose name the defendant might have sued, for the recovery of the amount so secured when the time of payment arrives (*o*).

SUB-SECT. 7.—*Removal of Judgment into the High Court.*

Removal of county court judgment to High Court.

1327. Where a judge of the High Court (*p*) is satisfied that a judgment debtor in a county court for an amount exceeding £20, exclusive of costs (*q*), has no goods which can be conveniently taken to satisfy the judgment, he may, if he think fit, and on such terms as to costs as he may direct, order a writ of *certiorari* (*r*) to issue to remove the judgment into the High Court. When so removed a judgment has the same force and effect, and the same proceedings may be had thereon, as a judgment of the High Court, except that no action may be brought upon it (*s*).

SUB-SECT. 8.—*Setting aside or Stay of Execution.*

Stay of execution for good cause.

1328. If at any time it appears to the satisfaction of the judge that the defendant in any action or matter is unable, from sickness or other sufficient cause (*t*), to discharge the debt or damages recovered against him, or any instalment, he may in his discretion

(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 152. As to priority of executions issued out of the same county court, see p. 555, *ante*.

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 147. For the general law as to what and whose goods may be seized in execution, see title EXECUTION; also, where property is subject to a bill of sale, title BILLS OF SALE, Vol. III., p. 61. As to execution against the goods of a partnership, see p. 556, *ante*.

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 148.

(*p*) A master can make the order.

(*q*) The High Court has no power to order a county court judgment to be removed into the High Court to enable a successful defendant to issue execution for his costs (*Sconce* v. *Blackman* (1886), 2 T. L. R. 421).

(*r*) As to the writ of *certiorari*, see title CROWN PRACTICE.

(*s*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 151.

(*t*) Mere insufficiency of means on the part of the debtor is not a sufficient cause (*Attenborough* v. *Henschel*, [1895] 1 Q. B. 833). The existence of an administration order under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 122, which prevents the debtor from discharging his debts in the ordinary

suspend or stay any execution issued in such action or matter for such time and upon such terms as he may think fit, and so on from time to time until it appears that the cause of inability has ceased (*u*).

Payment by debtor before sale.

If a judgment debtor before actual sale pays, causes to be paid, or tenders to the registrar of the court out of which the warrant issued, or the bailiff holding the warrant, the amount and costs inserted in the warrant, or such part as the judgment creditor agrees to accept in full for his debt or damages and costs, together with the fees indorsed on the warrant, the execution will be superseded and the debtor's goods discharged (*a*).

Payment into court before sale.

1329. Where after the issue of a warrant of execution, but before sale, money is paid into the court out of which the warrant was issued, or into any foreign court to which the warrant was sent for re-issue (*b*), or to the bailiff holding it, the following provisions apply (*c*) :—

Payment into "home" court.

(1) Where payment is made into the court in the district of which the warrant is to be executed, the fact and the amount of the payment must at once be notified by the registrar through the high bailiff to the bailiff holding the warrant (*d*).

Payment into "home" court where warrant re-issued in foreign court.

(2) Where payment is made into the home court after the warrant has been sent for re-issue to any foreign court, the fact and amount of the payment must at once be notified by post by the registrar of the home court to the high bailiff of the foreign court, who must immediately notify the bailiff holding the warrant (*e*).

Indorsement of payment on warrant.

(3) The bailiff holding the warrant, on receiving payment or notice of payment, must immediately indorse on the warrant the amount of the payment, and sign the indorsement. If the amount paid is insufficient to satisfy the amount to be levied and the costs of execution incurred before payment or notice of payment is received, the execution, unless withdrawn by the plaintiff, must proceed only for the balance of the original amount to be levied and the costs of execution calculated on that amount, less the amount so paid (*f*).

Computation of time of payment.

(4) Money paid into the court in the district of which the warrant is to be executed is deemed to have been received by the high bailiff at the time when it was received by the registrar; and money paid into the home court is deemed to have been received by the high bailiff of the foreign court at the time when he receives notice of its having been received; and this money must be applied as if it had been received by the high bailiff. But where, if the money paid into court had been received by the high bailiff, it

way, has been held sufficient cause (*Pearson* v. *Wilcock*, [1906] 2 K. B. 440, C. A.). As to such administration orders, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 298, 299.

(*u*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 153. For form of order to suspend, see County Court Rules, Appendix, Form No. 153.

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 155. For form of receipt, see County Court Rules Appendix, Form 166.

(*b*) Under the provisions of County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 158; see p. 567, *post*.

(*c*) County Court Rules, Ord. 25, r. 23A (1).

(*d*) *Ibid.*, r. 23A (2).

(*e*) *Ibid.*, r. 23A (3). As to the meaning of "home" and "foreign" court, see pp. 468, 472, *ante*.

(*f*) County Court Rules, Ord. 25, r. 23A (4).

SECT. 6. Execution.

would be his duty under the Bankruptcy Act, 1890 (*g*), to pay it over to the official receiver or trustee in bankruptcy, the high bailiff must pay over the amount paid into court, whether the warrant was sent for re-issue to any foreign court or not. The registrar of the court of which the high bailiff is high bailiff must pay such amount to the high bailiff, and will be allowed by the treasurer of his court, at his audit, the amount so paid; and if any part of the amount was paid into the home court, the registrar of that court must account for it and pay it over to the treasurer of his court at such time as the latter requires (*h*).

Effect of administration order.

1330. Where after a warrant of execution has issued against the goods of a debtor the latter files in the court out of which the warrant issued an affidavit in the prescribed form (*i*), stating that an order for the administration of his estate has been made under the Bankruptcy Act, 1883 (*k*), and that the debt, in respect of which the warrant was issued, has been notified to the court in which the administration order was made, and that the judgment creditor has not obtained leave to proceed from that court, annexing to such affidavit a certificate of the registrar of the court in which the administration order was made, and upon such affidavit being filed at once gives notice of the filing to the judgment creditor, further proceedings under the execution must be stayed (*l*).

Where in any such case the warrant has been issued to a foreign district, the registrar of the court in which the affidavit is filed must at once give notice of it to the registrar of the foreign court (*l*). For the purposes of these provisions the registrar of the court in which the administration order was made must, upon the debtor's application, issue to him the required certificate (*m*).

Disposal of proceeds where administration order.

1331. Where proceedings under an execution are stayed in this manner, or under the provisions of the Bankruptcy Act, 1883, and the rules made thereunder (*n*) dealing with administration orders in the county court, any money received under the execution must, when received by the registrar of the court out of which the warrant issued from the high bailiff of that court, or, in the case of a warrant issued to a foreign district, when certified to the registrar of the home court (*o*), be dealt with in the following manner: if the administration order was made in or the proceedings stayed by the court out of which the warrant issued, it must be dealt with as the judge of that court directs; but if the administration order was

(*g*) Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11 (2); see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 274.

(*h*) County Court Rules, Ord. 25, r. 23A (5).

(*i*) County Court Rules Appendix, Form 192B.

(*k*) Under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 122; see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 294 *et seq.*

(*l*) County Court Rules, Ord. 25, r. 24A.

(*m*) *Ibid.*, r. 24B; and see County Court Rules, Appendix, Form 193A.

(*n*) See, generally, s. 122 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), and the Bankruptcy (Administration Order) Rules, 1902, made thereunder; and title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 296 *et seq.*

(*o*) Under County Court Rules, Ord. 28, r. 2; and see County Court Rules, Appendix, Form 175.

made in or the proceedings stayed by any other court, it must be certified (*p*) by the registrar of the court out of which the warrant issued to the registrar of the court in which the administration order was made, or by which the proceedings were stayed, and the amount certified paid over by the registrar of the court certifying it to the treasurer, as the latter requires; and the registrar of the court in which the administration order was made, or by which the proceedings were stayed, must pay out of any moneys in his hands the amount so certified as the judge of that court directs, and be allowed the amount by the treasurer of his court at his audit (*q*).

Costs of execution in such cases.

Where in any such case the costs of the execution incurred by the creditor are not allowed out of the money received, the creditor himself is liable; but they may be allowed as against the debtor, and may on application be added to the debt (*q*).

Effect of notice of receiving order.

1332. Where before sale, or completion of the execution by recovery of the full amount of the levy, notice is served on the high bailiff that a receiving order has been made against the debtor, the high bailiff must, on request, deliver the goods and any money seized or received to the official receiver, but the costs of the execution are a first charge on the goods or money (*r*). Where the high bailiff withdraws from possession in consequence of having received notice that a receiving order in bankruptcy has been made, he must, within twenty-four hours after withdrawal, send to the execution creditor notice thereof according to the prescribed form (*s*).

Interpleader.

1333. Where any claim is made to any goods taken in execution, the high bailiff may interplead (*t*); the claimant is then required to deposit with the bailiff the value of the goods claimed or pay the costs of keeping possession of them, otherwise they will be sold and the proceeds paid into court (*u*).

SUB-SECT. 9.—*Prior Claims for Rent and Taxes.*

Claim for rent.

1334. The statute (*w*) which requires payment of rent to the landlord before the removal of goods taken in execution does not

(*p*) See note (*o*) on p.562.

(*q*) County Court Rules, Ord. 25, r. 24C. As to order for possession fees and expenses incurred by high bailiff, see Ord. 25, r. 24A (County Court Rules, 1909, No. 2, May, 1909).

(*r*) Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11 (1); Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 46 (2), 168; compare *Re Holland, Ex parte Warren* (1885), 15 Q. B. D. 48, C. A. As to retention of proceeds of an execution by the high bailiff in respect of a judgment exceeding £20, and his duties upon notice of a receiving order against the debtor, see Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11 (2); and p. 566, *post*. See also titles BANKRUPTCY AND INSOLVENCY, Vol. II., p. 274; EXECUTION.

(*s*) County Court Rules, Ord. 2, r. 36; and County Court Rules, Appendix, Form 172.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 157.

(*u*) *Ibid.*, s. 156. Where a sum sufficient to meet the claim, though less than the value of the goods, is deposited with the bailiff and paid by him into court, he is deemed to take it on the footing that it represents the value of the goods seized; he has then no right to remain in possession, and no right to possession fees thereafter (*Newsum, Sons & Co., Ltd.* v. *James*, [1909] W. N. 112). For the general law of interpleader, see title INTERPLEADER.

(*w*) Landlord and Tenant Act, 1709 (8 Ann. c. 18), s. 1. This Act is c. 14 in

SECT. 6. Execution.

apply to executions under the warrant of a county court. But the landlord of a tenement in which any goods (*a*) are taken in execution by the warrant of a county court may claim rent within five clear days from the taking, or before the removal of the goods, by delivering to the bailiff making the levy a writing signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the time for and in respect of which it is due (*b*).

Distress by bailiff after such claim.

If the claim be made, the bailiff or officer making the levy must, in addition to the levy, distrain for the rent so claimed with costs of such distress, and must not within five days from the distress sell the goods taken, unless they are of a perishable nature, or upon the request in writing of the party whose goods have been taken. The bailiff must afterwards sell such of the goods under the execution and distress as will satisfy, first, the costs of the sale, next the landlord's claim, and lastly the amount for which the warrant was issued, but the landlord's claim must not exceed the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case. If any replevin is made of the goods taken, the bailiff must, notwithstanding, sell such portion of them as will satisfy the costs of the sale under the execution, and the amount for which the warrant is issued; and in either event the overplus of the sale, if any, and the residue of the goods, must be returned to the defendant. The poundage of the high bailiff and broker for keeping possession, appraisement, and sale under the distress will be the same as if the distress had been an execution of the court, and no other fees may be taken or demanded (*c*).

Arrears of taxes.

1335. No goods belonging to any person at the time when King's taxes are in arrear can be taken in execution, except at the suit of the landlord for rent, unless the bailiff before the sale or removal of the goods pays all arrears for not more than one year (*d*).

SUB-SECT. 10.—*Sale under Execution.*

Time for sale.

1336. No sale of any goods taken in execution may take place until after the end of five days at least from when they were taken, unless they are of a perishable nature, or upon the request in writing of the party whose goods they are (*e*).

Ruffhead's edition and is so referred to in s. 160 of the County Courts Act, 1888 (51 & 52 Vict. c. 43).

(*a*) But under these provisions, if the bailiff seizes goods belonging to a stranger, he cannot distrain such goods for the rent of the landlord (*Beard* v. *Knight* (1858), 8 E. & B. 865; *Foulger* v. *Taylor* (1860), 5 H. & N. 202). The bailiff must be rightfully in possession of the goods, and so must not be in the position of a trespasser (*Hughes* v. *Smallwood* (1890), 25 Q. B. D. 306).

(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 160.

(*c*) *Ibid.* A bailiff is entitled to treat the execution and the distress as different proceedings for the purpose of calculating the poundage and to receive separate fees for each transaction (*Re Broster, Ex parte Pruddah*, [1897] 2 Q. B. 429).

(*d*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 88; and see title EXECUTION.

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 154.

Until the sale the goods must be deposited by the bailiff in some fit place, or left in the custody of a fit person, approved by the high bailiff, to be put in possession by the bailiff (*e*).

Brokers and appraisers.

1337. The high bailiff may from time to time, as he thinks proper, appoint persons for keeping possession, and sworn brokers and appraisers for selling or valuing the goods or effects taken as may appear to him necessary; and he may direct security to be taken from each of these persons, in amount and manner as he thinks fit, for the faithful performance of their duties without injury or oppression, and either the judge or high bailiff may dismiss them (*e*).

Bailiffs as brokers or appraisers.

1338. The judge may by writing under his hand authorise any of the bailiffs appointed by the high bailiff to act as brokers or appraisers for selling or valuing goods or effects taken in execution; and the bailiffs so authorised by the judge may, without other licence, perform the same duties and be entitled to the same poundage as the sworn brokers or appraisers (*f*).

Payment of brokers and appraisers.

The goods may not be sold for the purpose of satisfying the warrant of execution except by one of the appointed brokers or appraisers, who are entitled to have, out of the produce of the goods distrained or sold, 6*d*. in the pound on the value of the goods for appraisement, whether by one or more brokers, over and above the stamp duty (*g*); and for advertisements, catalogues, sale and commission, and delivery of goods 1*s*. in the pound on the net produce of the sale (*h*).

Time for appraisement.

No appraisement may be made until the fifth day of the bailiff's holding possession of the goods under the execution, unless the goods are of a perishable nature, or are sold at the request of the party before the expiration of four days, or are removed (*i*).

Inventory of goods for debtor.

1339. Where the goods taken in execution are removed, the high bailiff must give the execution debtor a sufficient inventory of the goods removed, and also a notice in writing, signed by the high bailiff, of the time and place of the sale. The inventory and notice must be given to the execution debtor personally, or sent to him by post to his place of residence, if known, or, if unknown, left at or sent by post addressed to the execution debtor at the place from which the goods are removed. The inventory must be given or sent at the time of or immediately after the removal of the goods; and the notice at least twenty-four hours before the time fixed for the sale (*j*).

Sale by public auction.

1340. Where an execution is for a sum exceeding £20 (including legal incidental expenses), the sale must, unless the court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and must be publicly

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 154.
(*f*) *Ibid.*, s. 159.
(*g*) See title VALUERS AND APPRAISERS.
(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 154.
(*i*) County Court Rules, Ord. 25, r. 21.
(*j*) *Ibid.*, r. 22.

SECT. 6. **Execution.**

advertised by the high bailiff on and during three days next preceding the day of sale (*k*).

Application for private sale.

Any application for an order that a sale under an execution may be otherwise than by public auction, must be made to the court on notice in writing according to the form provided (*l*), stating shortly the grounds of the application (*m*). The high bailiff must on the demand of any applicant desirous of making the above application, deliver to him a written list of the names and addresses of every person at whose instance any warrant or writ of execution against the goods of the debtor has been lodged with him (*n*). The notice must be served four clear days at least before the day appointed for the hearing of the application on the high bailiff and on every person named in the list other than the applicant (*o*). If the high bailiff has notice of another or other executions, the court must not consider any application for leave to sell privately until the notice has been duly given to the other execution creditor or creditors (*p*). On the hearing of the application the applicant must produce the above list to the court (*q*). Every person upon whom the notice is served may attend the hearing and be heard, and the court may on the hearing direct that all or any part of the costs be borne by any of the persons attending, or otherwise as may be just (*r*).

Disposal of proceeds of sale.

1341. The high bailiff, except where he is by statute required to retain them, must pay over the proceeds of the sale to the registrar of the court of which he is high bailiff within twenty-four hours of receipt. The registrar then indorses the receipt upon the warrant, and the high baliff must file such process, and retain it in his custody (*s*). But where under the Bankruptcy Act, 1890 (*t*), he is required to hold the proceeds of the sale, or any money paid to avoid a sale, for fourteen days, he must within twenty-four hours after the sale, or receipt of the money, send to the registrar of the court out of which the warrant of execution was originally issued, and to the execution creditor, notice in the prescribed form (*a*) of the levy and the amount realised (*b*).

Account of sale by high bailiff.

1342. When the goods have been sold, the high bailiff, on the request of the execution debtor, must furnish him with a detailed

(*k*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 145, 168; and compare *Re Holland, Ex parte Warren* (1885), 15 Q. B. D. 48, C. A.

(*l*) County Court Rules, Appendix, Form 170.

(*m*) County Court Rules, Ord. 25, r. 24 (1).

(*n*) *Ibid.*, r. 24 (2).

(*o*) *Ibid.*, r. 24 (3).

(*p*) Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), ss. 12, 31 (2); Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168; compare *Re Holland, Ex parte Warren, supra.*

(*q*) County Court Rules, Ord. 25, r. 24 (4).

(*r*) *Ibid.*, r. 24 (5).

(*s*) County Court Rules, Ord. 2, r. 34.

(*t*) Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11 (2); and see *Willey* v. *Hucks* (1909), 78 L. J. (K. B.) 513; see also titles BANKRUPTCY AND INSOLVENCY, Vol. II., p. 274; EXECUTION.

(*a*) County Court Rules, Appendix, Form 171.

(*b*) County Court Rules, Ord. 2, r. 35. As to the general law dealing with a sale and the application of the proceeds under an execution, see title EXECUTION.

account in writing of the sale, and of the application of the proceeds (*c*).

SUB-SECT. 11.—*Execution out of the Jurisdiction.*

Execution on judgments of other courts.

1343. The county courts, in addition to issuing execution to enforce their own judgments, have also power to issue execution to enforce the judgments of other local courts. In all cases where a final judgment has been obtained in any action brought in a borough or other local court of record, wherein the debt or damages does not exceed £20 (exclusive of costs), and also in all cases where any rule or order has been made by the judge for the payment of any sum of money not exceeding £20, such court may send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant possesses any goods. The registrar of the latter court must stamp or seal the writ or precept, and thereupon the high bailiff of that court must execute it in the same manner as if it had been issued out of such court, the high bailiff taking all the usual and proper fees and making a return of what he has done under it to the bailiff or serjeant-at-mace of the court. In all matters done under such writ or precept, or in relation thereto, the high bailiff is under the direction and control of the judge of that court of which he is high bailiff, as if the writ or precept had issued from there. But the costs of more than one writ, precept, or warrant must not be allowed against the execution debtor unless by order of the judge of the "said (*d*) court" (*e*).

Procedure in case of execution out of jurisdiction.

1344. In all cases where a warrant has been issued against the goods of any person, and the goods are out of the jurisdiction of the court, the high bailiff of that court must send the warrant of execution to the registrar of any other court within the jurisdiction of which the goods are believed to be, with a warrant in the prescribed form (*f*) annexed to it, under the hand of the high bailiff and seal of the court from which the original warrant issued, requiring its execution, and the registrar of the court to which the warrant is sent must immediately make an entry of the receipt in the "Foreign Executions Re-issued Book" (*g*), seal and stamp it with the seal of his court, and issue it to the high bailiff of his court. The latter is then authorised and required to act in all respects as if the original warrant had been directed to him by his own court (*h*). Where by virtue of the warrant the bailiff of the foreign court receives any money, he must, within twenty-four hours of receiving it, pay it over to the registrar of the foreign court, and must, unless

(*c*) County Court Rules, Ord. 25, r. 23.

(*d*) Apparently the borough or local court is intended, *sed quære*.

(*e*) Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), s. 6. As to such courts, see generally title COURTS.

(*f*) County Court Rules, Appendix, Form 173.

(*g*) County Court Rules, Ord. 28, r. 1.

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 158; compare also County Court Rules, Ord. 25, r. 23A; and p. 561, *ante*. As to when a warrant sent to a foreign court binds the property in the goods of the execution debtor, see *Birstall Candle Co.* v. *Daniels*, [1908] 2 K. B. 254; and note (*s*), p. 558, *ante*.

SECT. 6. Execution.

an interpleader summons as to such money is pending, make a return in writing of the amount received according to the form prescribed (*i*). In the case of a levy having been made, the bailiff must state in the return the gross amount produced by the levy, particulars of the appraiser's and broker's charges, and the fees allowed for keeping possession, and he must pay over to the registrar of the foreign court the amount levied, less the charges and fees. The latter must then certify in the return the amount paid into court, and the correctness of the charges, and must account for and pay over such amount to the treasurer of his court, at such time as the treasurer requires. The high bailiff thereupon transmits the return to the high bailiff of the home court (*k*), and such latter bailiff must, within twenty-four hours from the receipt of the return, deliver it to the registrar of his court, who must file it and pay out of any money in his hands to the plaintiff in the action the amount certified in the return as having been received by the registrar of the foreign court as the proceeds of the execution. The amount so certified must then be entered in a book according to the prescribed form (*l*) by the registrar of the home court, who shall be allowed the amount so paid by the treasurer of his court at his audit (*m*).

Return by high bailiff of "foreign" court.

1345. Whenever a warrant required to be executed in a foreign district has not been executed within a month from the day of delivery, the high bailiff of the foreign court must on the day after the determination of that month make a return to the registrar of the home court according to the form prescribed (*n*) and send a copy of it to the execution creditor. When any such warrant has not been executed during the time it is in force, such high bailiff must return it to the registrar of the home court within twenty-four hours from the expiration of that time, indorsing on it the reason why it could not be executed, and signing the indorsement. But the high bailiff must return the warrant, although unexecuted, to the home court at any time he is directed so to do by the registrar of the home court, and he must at all times give such information as such registrar may require respecting the warrant (*o*).

SUB-SECT. 12.—*Recovery of Possession of Land.*

Judgment for possession of land.

1346. A judgment or order for the recovery or for the delivery of the possession of land, or for the recovery of possession of a tenement, whether made in an action of ejectment or in any other action or matter, can be enforced by a warrant of possession, which

(*i*) County Court Rules, Appendix, Form 175.
(*k*) As directed by County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 158.
(*l*) County Court Rules, Appendix, Part II., Form M.
(*m*) County Court Rules, Ord. 28, r. 2. As to the liability of a bailiff of one court to pay compensation for negligence on the order of a judge of another court, see *R.* v. *Shropshire County Court Judge* (1887), 20 Q. B. D. 242; and title EXECUTION.
(*n*) County Court Rules, Appendix, Form 174.
(*o*) County Court Rules, Ord. 2, r. 37.

must be according to such of the prescribed forms (*p*) as is applicable to the particular case (*q*).

SECT. 6. Execution.

Time for issue of warrant.

1347. Where in an action of ejectment judgment is given for the plaintiff, execution may issue upon the day named in the judgment; and if no day is named, then it may issue after the expiration of fourteen clear days from the day on which judgment is given (*r*). But when an order is made for the recovery or for the delivery of the possession of land to any person (other than an order in an action for the recovery of possession of a small tenement where the term has expired or been determined by notice, or rent for one half-year is in arrear (*s*)) the warrant of possession must not be issued by the registrar without evidence by affidavit of service of the order and disobedience to it (*t*).

Separate warrants.

1348. Where in an action of ejectment judgment is given for the recovery of possession and costs, there may be either one warrant or separate warrants of execution for the recovery of possession and for the costs, at the election of the plaintiff (*a*).

Execution on judgment for defendants' costs.

1349. Where in an action of ejectment judgment is given for the defendants, or any of them, with costs, execution may issue for the costs on the day named in the judgment; and if no day is named, then at the expiration of fourteen clear days from the day on which the judgment is given (*b*).

Examination to aid execution.

1350. In case of any judgment or order other than for the recovery or payment of money, if any difficulty arises in the execution or enforcement of it, any party interested may apply to the court, and the court may make an order for the attendance and examination of any party or otherwise as may be just (*c*).

SUB-SECT. 13.—*Recovery of Specific Chattels.*

Warrant of delivery of chattel.

1351. Where it is sought to enforce a judgment (*d*) or order for the recovery of any property other than land or money, the court may, upon the application of the plaintiff, order a warrant of delivery to issue for the delivery of the property, and if the property cannot be found, for the bailiff to distrain the defendant by all his lands and chattels within the district of the court of which he is bailiff, till the defendant delivers up the property; or, at the option

(*p*) County Court Rules, Forms 251, 263, 264, 265.
(*q*) County Court Rules, Ord. 25, r. 64; and compare R. S. C., Ord. 42, r. 5; Ord. 47, r. 1. As to the general law on the subject, see title EXECUTION.
(*r*) County Court Rules, Ord. 25, r. 65.
(*s*) Under the County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 138, 139.
(*t*) County Court Rules, Ord. 25, r. 68; and compare R. S. C., Ord. 47, r. 2.
(*a*) County Court Rules, Ord. 25, r. 66; and compare R. S. C., Ord. 47, r. 3.
(*b*) County Court Rules, Ord. 25, r. 67.
(*c*) *Ibid.*, r. 5; and compare R. S. C., Ord. 42, r. 33.
(*d*) In an action of detinue the county court judge has, by s. 89 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), the same power as the High Court to make an order for the delivery of the specific chattel, without giving the defendant the option of paying its assessed value (*Winfield* v. *Boothroyd* (1886), 34 W. R. 501; and compare *Hymas* v. *Ogden*, [1905] 1 K. B. 246, C. A., *per* COLLINS, M.R., at p. 250).

SECT. 6. Execution.

of the plaintiff, for the bailiff to levy the assessed value, if any (*e*), of the property out of the defendant's goods (*f*).

Default of obedience.

Default in obedience to the warrant is a contempt of court for which a judge may commit, even though the procedure of distraint under the warrant has not been applied (*g*).

Form of warrant.

Warrants of delivery must be according to the prescribed forms (*h*), and when such a warrant is issued the plaintiff is entitled, either by the same or a separate warrant of execution, to levy the damages and costs awarded out of the defendant's goods (*i*).

Examination to aid execution.

If any difficulty arises in the enforcement of the warrant, the court may order the examination of any party, or otherwise as may be just (*k*).

Sale or detention of property.

1352. Where any personal property is directed to be sold by auction, detained, or preserved, the high bailiff must, if the court so direct, superintend such sale, detention, or preservation; and where the property is to be sold by private contract, he shall carry out the directions of the court in respect to the sale (*l*); but this does not apply to an ordinary execution upon a judgment or order for the payment of money (*m*).

Where a warrant directs the high bailiff to detain and preserve any goods, he must take and retain possession of them until further order be made by the court (*n*).

Inventory and appraisement by high bailiff.

Where a warrant directs the high bailiff to take possession of any goods until security be given by some party for their safe keeping, or for the payment of their value in default of safe keeping, but does not specify the amount of the security, the high bailiff must make an inventory and appraisement of the goods which he takes into his possession. Upon receiving as a deposit the amount of the appraisement, or sufficient security, to be approved by the registrar, for the safe custody of the goods, and for the delivery up of possession of them upon request, the high bailiff must relinquish the possession of them on condition that they are to be re-delivered to him on request, or held to abide the order of the court. If the warrant specifies the amount of security no less deposit or security is sufficient (*o*).

SECT. 7.—*Attachment of Debts.*

Garnishee summons.

1353. Any person who has obtained a judgment or order for the recovery or payment of money may, either before or after an oral

(*e*) The assessment is not now a condition precedent to making the order (*Hymas* v. *Ogden*, [1905] 1 K. B. 246, C. A., *per* COLLINS, M.R., at p. 250).

(*f*) County Court Rules, Ord. 25, r. 69; and compare R. S. C., Ord. 48, r. 1.

(*g*) *Hymas* v. *Ogden*, *supra*.

(*h*) County Court Rules, Appendix, Forms 293, 294, 295, 297.

(*i*) County Court Rules, Ord. 25, r. 70; and compare R. S. C., Ord. 48, r. 2.

(*k*) County Court Rules, Ord. 25, r. 5; compare R. S. C., Ord. 42, r. 38; and see p. 551, *ante*.

(*l*) County Court Rules, Ord. 2, r. 38.

(*m*) That is, to an execution under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 146, as to which see p. 551, *ante*.

(*n*) County Court Rules, Ord. 2, r. 39.

(*o*) *Ibid.*, r. 40.

examination (*p*) of the debtor (*q*), upon lodging with the registrar of the court, in which the judgment or order was given or made, an affidavit (*r*) by himself or his solicitor stating that a judgment has been obtained, and is still unsatisfied, and to what amount, and that another person (called the garnishee) is indebted to the debtor, and is in respect of such debt within the jurisdiction of the court, and could be or has been sued therein with or without leave (*s*), enter a plaint to obtain payment to him of the amount of the debt due to the debtor from the garnishee, or so much of it as may be sufficient to satisfy the judgment or order, together with costs of the garnishee proceedings. A summons in the form prescribed (*t*) must then be issued by the registrar calling upon the garnishee to show cause why he should not pay to the attaching creditor the debt due from him to the debtor, or so much as is sufficient to satisfy it with the costs of the garnishee proceedings; and the name and address of the person entering the plaint, or of his solicitor, must be entered on the summons (*a*).

Garnishee out of jurisdiction of court.

1354. Where the garnishee is not in respect of the debt within the jurisdiction of the court in which the judgment or order was obtained, the attaching creditor, upon lodging with the registrar of the court, in the district of which the garnishee resides or carries on business, a certificate (*b*) of the judgment or order, together with an affidavit as last described (*c*), may enter a plaint against the garnishee in the last-mentioned court. A summons (*d*) will then be issued and all proceedings taken as if the judgment or order had been obtained in that court (*e*).

Service of summons.

1355. The summons must be personally served on the garnishee by any person by whom a default summons may be served (*f*), or on the solicitor of the garnishee (*g*); and when so served it binds in the hands of the garnishee all debts due, owing, or accruing from him to the debtor liable under the judgment or order (*h*). Where the garnishee is a firm or company or other corporation, the summons need not be served personally, but it may be served in the same manner as an ordinary summons (*i*).

(*p*) As to the rules for applying to the court for an examination of the debtor, see p. 551, *ante*.

(*q*) "Debtor" here includes a married woman against whom judgment has been obtained in respect of her separate estate (County Court Rules, Ord. 26, r. 1)

(*r*) County Court Rules, Appendix, Form 198.

(*s*) Under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74.

(*t*) County Court Rules, Appendix, Form 199.

(*a*) County Court Rules, Ord. 26, r. 1. As to the general law of attachment of debts, especially as to what debts have been held attachable and what not attachable, and the special statutory exceptions, see title EXECUTION.

(*b*) County Court Rules, Appendix, Form 155.

(*c*) See note (*r*), *supra*.

(*d*) County Court Rules, Appendix, Form 199.

(*e*) County Court Rules, Ord. 26, r. 2.

(*f*) Under County Court Rules, Ord. 7, r. 33. As to service of a default summons, see pp. 473 *et seq.*, *ante*.

(*g*) In accordance with County Court Rules, Ord. 7, r. 12.

(*h*) County Court Rules, Ord. 26, r. 3.

(*i*) *Ibid.*, r. 4. As to service of an ordinary summons, see pp. 468 *et seq.*, *ante*.

SECT. 7. **Attachment of Debts.**

Payment into court by garnishee.

1356. The garnishee may at any time before the return day of the summons pay into court the amount admitted by him to be due from him to the debtor, less costs allowed by the scales (*k*) in respect of such payment, if costs are actually incurred. If the amount admitted is, after the deduction of costs, more than sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and solicitor's costs (if any) indorsed on the garnishee summons, the garnishee may pay into court a sum sufficient to satisfy such amount, fees, and costs (*l*). The registrar must send notice of any payment into court (*m*) to the person who obtained the judgment or order, as in the case of payment into court in an action before judgment (*n*).

Acceptance of money paid into court.

1357. A person electing to accept the money paid into court in satisfaction of his claim against the garnishee, must send notice of his acceptance (*o*) to the registrar and the garnishee as in the case of payment into court in an action (*p*). After this all further proceedings against the garnishee must abate, except as to any application for costs (*q*), and the person so accepting is not liable for any costs incurred by the garnishee after receiving the notice (*r*).

Time for payment into court; costs.

1358. A garnishee who pays money into court five clear days before the return day cannot be made liable for any further costs incurred by the person who obtained the judgment or order. But if payment in is made less than five clear days before the return day, the court may order (*s*) the garnishee to pay such fees and costs, beyond the fees and costs (if any) paid into court by the garnishee, as the attaching creditor may have properly incurred for work done before receipt of the notice of payment into court, and in attending the court to obtain the order, but no hearing fee will be charged. Intention to apply for such costs must be stated in the notice of acceptance (*t*) of the sum paid in, except where the time of payment into court by the garnishee does not permit of notice of acceptance being given, when application may be made without notice (*a*).

Where no notice of acceptance.

1359. Where the attaching creditor has not given notice of acceptance, he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs reasonably incurred by the garnishee since payment in, which may be allowed by the court (*b*).

(*k*) See County Court Rules, Appendix, Part IV.
(*l*) County Court Rules, Ord. 26, r. 5 (1).
(*m*) County Court Rules, Appendix, Forms 73, 74.
(*n*) County Court Rules, Ord. 26, r. 5 (2).
(*o*) County Court Rules, Appendix, Form 76.
(*p*) County Court Rules, Ord. 26, r. 5 (3).
(*q*) See p. 575, *post*.
(*r*) County Court Rules, Ord. 26, r. 5 (4).
(*s*) County Court Rules, Appendix, Form 77.
(*t*) *Ibid.*, Form 76.
(*a*) County Court Rules, Ord. 26, r. 5 (5).
(*b*) *Ibid.*, r. 5 (6).

1360. Money paid into court by the garnishee, and accepted by the attaching creditor, will, on application, be paid out to him in accordance with the rules as to payment out of money paid into court (*c*), but subject to the following provisions:—

Payment out of court: special provisions.

(1) Before such money is paid out the court must be satisfied that the attaching creditor has neither received payment from any other source nor obtained an order for payment under any other garnishee proceedings. And if it appears that he has received payment or obtained an order for payment of any part of the amount, so much only of the money paid into court will be paid out to him as will, with the amount so received or for payment of which an order has been obtained, make up the full amount, and any fees or costs allowed in the garnishee proceedings; and the balance will be dealt with as the court may direct (*d*).

(2) Before the money is paid out the judge may direct the registrar to send to the debtor notice (*e*) of the garnishee summons having been issued (with a copy of such summons) and of the money having been paid into court, with a notice (*e*) informing him that the money will be paid out to the judgment creditor, unless he appears on the return day of the garnishee summons (or later day named in the notice), and shows cause to the contrary (*f*). The notice may be delivered or sent by post to the debtor at his usual residence or place of business, and he may appear and show cause according to the notice, and the court may then make such order as to the money paid into court, and as to costs, as may be just (*g*). If the debtor suggests, or it is otherwise made to appear to the court, that the money paid in belongs to or is claimed by some third person, or that any third person has or claims to have any lien or charge on it, the court may proceed (*h*) to determine the question (*i*).

1361. No hearing fee is payable on an application for payment out of money paid into court by a garnishee, unless notice is directed to be given (*k*) and the debtor to whom it is given appears and shows cause, or unless the debtor suggests, or it is otherwise made to appear to the court, that the money belongs to or is claimed by a third person, or that any third person has or claims to have a lien or charge on it, and the court proceeds to determine the question (*l*), in either of which cases a hearing fee is payable on the amount paid into court (*m*).

No hearing fee on application for payment out of court.

1362. In default of acceptance by the judgment creditor, proceedings against the garnishee may proceed (*n*).

Default of acceptance by judgment creditor.

(*c*) As to payment out of money paid into court, see p. 497, *ante*.
(*d*) County Court Rules, Ord. 26, r. 6 (2) (a).
(*e*) County Court Rules, Appendix, Form 200.
(*f*) County Court Rules, Ord. 26, r. 6 (2) (b).
(*g*) *Ibid.*, r. 6 (2) (c).
(*h*) In accordance with *ibid.*, r. 10; see p. 574, *post*.
(*i*) County Court Rules, Ord. 26, r. 6 (2) (d).
(*k*) Under *ibid.*, r. 6 (2) (d).
(*l*) In accordance with *ibid.*, r. 10.
(*m*) *Ibid.*, r. 6 (2) (e).
(*n*) *Ibid.*, r. 5 (7).

SECT. 7. **Attachment of Debts.**

Judgment where garnishee does not pay into court or appear.

1363. If the garnishee does not before the return day of the summons pay into court the amount admitted by him to be due from him to the judgment debtor, or so much as shall be sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and solicitor's costs (if any) indorsed on the garnishee summons, and does not on the return day dispute the debt, or if he does not appear on the return day, the judge may give judgment for the attaching creditor (*o*), and order execution to issue (*p*) to levy the amount due from the garnishee, or so much as shall be sufficient to satisfy the judgment or order, and any costs allowed (*q*).

Garnishee appearing and disputing liability.

1364. If no amount is paid into court, or the amount (if any) paid in (*r*) is not accepted, and the garnishee appears on the return day and disputes his liability, the judge may then determine as to the liability of the garnishee to pay any amount or further amount on account of the debt claimed to be due from him to the judgment debtor, and as to the party by whom the costs of the garnishee proceedings must be paid, and make an order (*s*) accordingly. But he may, instead of giving judgment, order any question, necessary for determining the garnishee's liability, to be tried in any manner in which any question in an action may be tried (*t*).

Transmission of order to "foreign" court.

1365. Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he is garnished was obtained, the registrar of such first-mentioned court must at once send a certificate of the order of his court (*a*) to the court in which the judgment or order was obtained, and also a notice from time to time, of any payment made on, before, or after the return day (*b*).

Third party claiming debt attached.

1366. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee or the judgment debtor, or is otherwise made to appear to the judge, that the debt sought to be attached belongs to or is claimed by some third person, or that any third person has or claims to have any lien or charge upon it, the judge may order such third person to appear and state the nature and particulars of his claim. After hearing the allegations of such third person, and of any other person whom the judge by the same or any subsequent order may order to appear, or in case of such person not appearing when ordered, the judge may decide in favour of the attaching creditor, or may order any question to be determined between him and such third person, and may bar the claim of the latter or make any other order as he thinks fit, upon such terms, in all cases, with respect to the lien or charge (if

(*o*) County Court Rules, Appendix, Form 201.
(*p*) *Ibid.*, Form 202.
(*q*) County Court Rules, Ord. 26, r. 7; and compare R. S. C., Ord. 45, r. 3, and the cases thereunder. As to the general law, see title EXECUTION.
(*r*) Under County Court Rules, Ord. 26, r. 5.
(*s*) County Court Rules, Appendix, Form 201.
(*t*) County Court Rules, Ord. 26, r. 8.
(*a*) County Court Rules, Appendix, Form 155.
(*b*) County Court Rules, Ord. 26, r. 9.

any) of such third person, and to costs, as the judge may think just and reasonable (*c*).

Effect of payment under order or execution thereon.

1367. Payment made by or execution levied upon a garnishee are a valid discharge to him as against the judgment debtor, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs, and which he is by the County Court Rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be set aside, or the judgment or order reversed (*d*).

Costs of garnishee proceedings.

1368. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, are in the discretion of the court. Any costs allowed to the judgment creditor, which are not ordered to be paid by the garnishee personally, are, unless otherwise directed, taxed by the registrar, and retained by the judgment creditor out of the money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor (*e*).

Entry of amount paid by garnishee.

1369. The registrar must enter in the books relating to the judgment or order obtained against the debtor a memorandum of the amounts paid or ordered to be paid by the garnishee (exclusive of the amount of any costs ordered to be paid by the garnishee personally) and of the costs allowed to the judgment creditor, and allowed to be retained by him out of the money recovered by him in the garnishee proceedings (*f*).

Discretion of judge on garnishee proceedings.

1370. In proceedings to obtain an attachment of debts the judge may, in his discretion, refuse to interfere, where from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious (*g*).

Where debt of garnishee is a judgment debt.

1371. Where the amount due from the garnishee to the debtor is due under a judgment or order obtained by the debtor against the garnishee, the garnishee is not liable to pay the amount due from him to the debtor to the attaching creditor by any larger instalments than those by which he is liable to pay such amount to the judgment debtor, unless the judge for good cause orders otherwise (*h*). Also the registrar must enter in the books relating to the judgment or order obtained by the debtor against the garnishee a memorandum of the amounts paid or ordered to be paid by the garnishee in the garnishee proceedings (inclusive of

(*c*) County Court Rules, Ord. 26, r. 10; and compare R. S. C., Ord. 45, rr. 5, 6.
(*d*) County Court Rules, Ord. 26, r. 11; and compare R. S. C., Ord. 45, r. 7. As to appeals see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*
(*e*) County Court Rules, Ord. 26, r. 12; and compare R. S. C., Ord. 45, r. 9A.
(*f*) County Court Rules, Ord. 26, r. 13; and compare R. S. C., Ord. 45, r. 8.
(*g*) County Court Rules, Ord. 26, r. 14.
(*h*) *Ibid.*, r. 15 (a).

SECT. 7. Attachment of Debts.

any amount allowed to the garnishee for costs, and which he is by the County Court Rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount of any costs ordered to be paid by the garnishee personally). Such judgment or order will be deemed to be satisfied to the amount paid by or levied by execution upon the garnishee in the garnishee proceedings (inclusive of the amount of costs allowed to be deducted as above, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be subsequently set aside, or the judgment or order obtained against the debtor may be subsequently reversed. Also the judgment or order shall be deemed to be satisfied to the amount (exclusive as above) ordered to be paid in the garnishee proceedings, unless such proceedings are subsequently set aside, or the judgment or order obtained against the debtor is subsequently reversed, in which latter case the liability of the garnishee to the debtor under the judgment or order obtained by the debtor against him shall be revived to the amount (exclusive as above) ordered to be paid in the garnishee proceedings which remains unpaid at the time of the setting aside or reversal. A memorandum to this effect must be made in the books relating to such judgment or order (*i*).

Application for money paid into court by garnishee under judgment.

1372. A person who has obtained a judgment or order cannot take proceedings to obtain attachment of any sum which is due to the judgment debtor from any other person under a judgment or order obtained by the debtor against such other person, and which has been paid into court under the last-mentioned judgment or order for the use of the debtor. But in any such case the person who has obtained such judgment or order against the debtor may, on giving two days' notice in writing to the debtor and to the registrar to whom such sum has been paid, apply to the judge to order such sum to be paid to him. On receipt of any such notice the registrar must retain the money in court until after the application has been heard, and the judge, on the hearing of the application, may make such order as to the money so paid into court, and as to costs, as he thinks just. A memorandum shall then be made in the books relating to the judgment or order obtained by the debtor and the judgment or order obtained against him of the manner in which such money is ordered to be applied (*k*). These provisions apply where a person has obtained a judgment or order in the High Court or the county court into which money has been paid under a judgment or order obtained by the debtor, or in any other county court or inferior court (*l*).

Attachment of partnership debts.

1373. Debts owing from a firm carrying on business within England and Wales can be attached under these provisions, although one or more members of such firm are resident abroad;

(*i*) County Court Rules, Ord. 26, r. 15 (b).
(*k*) *Ibid.*, r. 16 (1).
(*l*) *Ibid.*, r. 16 (2).

provided that any person having the control or management of the partnership business or any member of the firm within England or Wales is served with the garnishee summons (*m*).

SECT. 8.—*Attachment for Disobedience of Orders.*

Orders enforceable by attachment.

1374. Orders in the nature of an injunction, and all orders, interlocutory or otherwise, within the competence of the court, which, if the same were made in an action or matter pending in the High Court, could in such court be enforced by attachment of the person or committal, may be enforced by order of the judge by warrant of attachment which must be according to the form (*n*) prescribed (*o*).

Indorsement and service of order.

Before application is made for a warrant, a sealed copy of the order sought to be enforced, endorsed with a notice in the prescribed form (*p*) must be served. The copy so endorsed must be issued by the registrar for service on the application of the party entitled to the order. By leave of the registrar it may be issued to the applicant or his solicitor and served by any person by whom a default summons may be served (*a*), but in default of such leave it must be issued to and served by a bailiff. Service must be personal, unless the judge makes an order for substituted service (*b*).

Issue and service of notice to show cause against committal.

If the person bound by the order fails to obey it, the registrar on application must, not less than three days after service of the endorsed copy of the order (unless the judge gives leave for earlier issue and service), issue for service a notice under the seal of the court (*c*) requiring the person who has failed to obey the order to appear on a day named in the notice, to show cause why he should not be committed for his contempt. The notice must be issued and served in the same manner as the endorsed copy of the order (*d*).

Order of judge for attachment.

On the day named in the notice, the judge, on proof of service of the endorsed copy of the order, and of the notice, and of the disobedience of the person in default, may order (*e*) a warrant of attachment (*f*) to issue unconditionally or on terms, and he may make such order as to costs as he may think fit. But if the party in default appears service of the copy order and notice need not be proved, unless the judge otherwise orders (*g*).

Service of order.

A sealed copy of the order of the judge authorising the issue of the warrant must be served either before or at the time of execution unless the judge otherwise orders (*h*).

(*m*) County Court Rules, Ord. 26, r. 17; and compare R. S. C., Ord. 48, r. 9.
(*n*) County Court Rules, Appendix, Form 349.
(*o*) County Court Rules, Ord. 25, r. 57. As to the jurisdiction in such attachment, see p. 433, *ante;* and, generally, title CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL, Vol. VII., pp. 307 *et seq.*
(*p*) County Court Rules, Appendix, Form 346.
(*a*) See County Court Rules, Ord. 7, r. 33; and p. 473, *ante.*
(*b*) County Court Rules, Ord. 25, r. 58. For the rules as to substituted service, see Ord. 7, rr. 40, 40 b; and p. 469, *ante.*
(*c*) County Court Rules, Appendix, Form 347.
(*d*) County Court Rules, Ord. 25, r. 59.
(*e*) County Court Rules, Appendix, Form 348.
(*f*) *Ibid.*, Form 349.
(*g*) County Court Rules, Ord. 25, r. 60.
(*h*) *Ibid.*, r. 61.

SECT. 8. Attachment for Disobedience of Orders.

Discharge of person in custody by judge.

Any person in custody under any order (other than an order under the Debtors Act, 1869 (*i*)) in which it is directed that the application for discharge must be made to the judge, may apply at the court, or by leave of the judge at any place which he may appoint, on filing an affidavit showing that he has cleared or is desirous of clearing his contempt, and giving two clear days' notice in writing (*j*) to the other party, with a copy of his affidavit. The discharge, if granted, must be given in the form (*k*) prescribed (*l*).

If the order of committal does not direct that an application for discharge must be made to the judge, then application may be made to the registrar, and the same practice followed as in application to the judge (*m*).

Part V.—Costs.

SECT. 1.—*General Principles.*

SUB-SECT. 1.—*Discretion of Judge.*

Costs in discretion of court.

1375. All the costs of any action or matter (*n*) not otherwise provided for by the County Courts Act, 1888 (*o*), must be paid or apportioned between the parties in such manner as the court shall think just, and, in default of any special direction, must abide the event of the cause or matter (*p*).

Exercise of discretion.

Generally the discretion of a county court judge as to costs must be exercised in the same manner and on the same principles as that of a judge of the High Court, there being no substantial difference between the words giving that discretion to county court judges (*q*) and those giving it to the judges of the High Court (*r*). The discretion must be exercised judicially. Thus, the fact that a defendant has availed himself of a defence allowed by law such as the Gaming Acts or the Statute of Limitations, is not a ground for depriving him of costs; on the other hand, there may be circumstances in the litigation, or leading up to the litigation, which would allow the judge to exercise his discretion against a successful party (*s*), but these

(*i*) 32 & 33 Vict. c. 62.
(*j*) County Court Rules, Appendix, Form 350.
(*k*) *Ibid.*, Form 351.
(*l*) County Court Rules, Ord. 25, r. 62.
(*m*) *Ibid.*, r. 63.
(*n*) As to costs in Admiralty actions, see title ADMIRALTY, Vol. I., p. 132. For costs under statutes conferring special jurisdiction in the county court, see pp. 622 *et seq.*, *post*; for costs in employers' liability and workmen's compensation cases, see title MASTER AND SERVANT.
(*o*) 51 & 52 Vict. c. 43.
(*p*) *Ibid.*, s. 113.
(*q*) *Ibid.*
(*r*) R. S. C., Ord. 65, r. 1.
(*s*) *Granville & Co.* v. *Firth* (1903), 72 L. J. (K. B.) 152, C. A., where the Gaming Acts were set up as a defence; *Elms* v. *Hedges* (1906), 95 L. T. 145, where the Statute of Limitations was set up as a defence. Oppression or misconduct by either of the parties by which costs have been unnecessarily incurred constitutes good cause to deprive the successful party of his costs (*Jones* v. *Curling* (1884), 13 Q. B. D. 262, C. A.); representations made by a defendant before action leading

SECT. 1. General Principles.

circumstances must be relevant to the question adjudicated upon (*t*). A county court judge has no power to order a successful defendant to pay the plaintiff's costs (*u*) unless part of such costs have been caused by the defendant's misconduct in the action (*a*). The fact that the damages are small is no ground for depriving a plaintiff of his costs if there has been no misconduct or oppression on his part (*b*); nor is the fact that the defendant had no intention of doing wrong (*c*). The judge must have proper materials before him to give him jurisdiction to make an order depriving a party of costs (*d*). When the judge has once exercised his discretion he is *functus officio*, and has no jurisdiction to vary his judgment (*e*). The judge must also exercise his discretion in view of the particular facts of the case in question, and cannot make a general rule applying to any particular class of cases (*f*). The same principles apply in the case of administration actions (*g*).

Non-appearance of plaintiff; nonsuit.

1376. If a cause or matter is struck out for non-appearance of the plaintiff, or he is nonsuited, or judgment is given against him, the judge has power to award to the defendant, if he appears and does not admit the claim, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion thinks just (*h*). This provision is to be read together with that which gives the judge a general judicial discretion over costs (*i*), and consequently the judge has power, in a proper case, to award some costs against the defendant where the plaintiff has either not appeared or failed to make out his case (*k*).

Discretion where action struck out for want of jurisdiction.

1377. Where an action or matter is commenced in a county court over which the court has no jurisdiction the judge must,

the plaintiff to believe that he is entitled to the relief sought may also constitute such good cause (*Buckley* v. *Irish Industrial Building Society* (1888), 22 L. R. Ir. 579). In exercising this discretion the judge is not confined to the consideration of the conduct of the party in the course of the litigation, but may consider his conduct previous to and conducing to the litigation (*Harnett* v. *Vise* (1880), 5 Ex. D. 307, C. A.).

(*t*) *Edmund* v. *Martell* (1907), 24 T. L. R. 25, C. A.

(*u*) *Andrew* v. *Grove*, [1902] 1 K. B. 625, where the Gaming Acts were set up as a defence. As to cases in which an action under the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), fails, but compensation is awarded under the Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), see *Cattermole* v. *Atlantic Transport Co.*, [1902] 1 K. B. 204, C. A.; and title MASTER AND SERVANT.

(*a*) *Andrew* v. *Grove*, [1902] 1 K. B. 625, *per* CHANNELL, J., at p. 628.

(*b*) *Tipping* v. *Jepson* (1906), 22 T. L. R. 743, C. A.

(*c*) *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

(*d*) *Westgate* v. *Crowe*, [1908] 1 K. B. 24, where the plaintiff was nonsuited on the ground that the defendants were not the persons liable, and the judge deprived the defendants of their costs on the ground that they had not given every assistance and information to the plaintiff to enable him to determine who was the proper person to sue.

(*e*) *Sweetland* v. *Turkish Cigarette Co.* (1899), 47 W. R. 511.

(*f*) *R.* v. *Marylebone County Court Judge* (1890), 34 Sol. Jo. 459.

(*g*) See p. 589, *post*.

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 88, 89.

(*i*) *Ibid.*, s. 113.

(*k*) See *Watson* v. *Petts* (No. 2), [1899] 1 Q. B. 430, *per* CHANNELL, J., at p. 435.

SECT. 1. General Principles.

unless the parties agree to the court having jurisdiction, order it to be struck out, and the judge has power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction therein and the plaintiff had not appeared, or had appeared and failed to prove his demand or complaint (*l*). Under this provision the judge has power to make an order for costs against the defendant as well as against the plaintiff in similar circumstances to those which would justify him in ordering a successful defendant to pay part of the unsuccessful plaintiff's costs (*m*).

Treble costs.

1378. If any party sues another in any court for any debt or other cause of action, and it is proved that he has already sued him and obtained judgment in any other court for the same (*n*), he must be adjudged to pay three times the costs of such second action to the opposite party (*o*). It is submitted that this means that the defendant's costs should be taxed in the ordinary manner, and the plaintiff be ordered to pay to the defendant three times that amount (*p*).

Party succeeding on some issues.

1379. Where a plaintiff succeeds on some of the issues and the defendant on others, the plaintiff as a rule is entitled to the general costs of the action, and the defendant to the costs of those issues on which he succeeds. But if the defendant has paid a sum of money into court, denying liability, and the plaintiff recovers less than that sum, then, though the defendant is entitled to the general costs of the action after payment in, the judge has discretion to grant to the defendant the costs of the issues as to liability on which he succeeds, in addition to the general costs of the action up to the time of paying in (*q*); and this is so even in the case of a new trial which has been granted when it is a term of the order that the costs of the new trial are to abide the event (*r*).

SUB-SECT. 2.—*Scales of Costs and Discretion of Judge thereto.*

Scales of costs.

1380. There are two scales of costs in the county court (*s*), the lower and the higher. The lower scale applies where the amount recovered exceeds £2 and does not exceed £10, except where the

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 114.

(*m*) *Watson* v. *Petts* (No. 2), [1899] 1 Q. B. 430. In equity causes transferred to the High Court because the subject-matter of the cause exceeds the jurisdiction of the court, the jurisdiction of the county court as to costs ceases (*Hares* v. *Lea* (1867) L. R. 10 Eq. 683).

(*n*) Damages to goods and damages to the person, although caused by the same wrongful act, give rise to distinct causes of action (*Brunsden* v. *Humphrey* (1884), 14 Q. B. D. 141, C. A.).

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 115.

(*p*) Some county court judges have expressed a doubt as to the meaning of "treble costs."

(*q*) *Dunn* v. *South Eastern and Chatham Rail. Co.*, [1903] 1 K. B. 358.

(*r*) *Ibid.*

(*s*) County Court Rules, Appendix, Part IV.

judge orders some other scale to apply (*t*), or except as between solicitor and client (*u*). Where less than £2 is claimed or recovered, as the case may be, then, in the absence of a special order of the judge, no scale is applicable, and the successful party can only recover the court fees (if any) on the said amount and allowances for witnesses.

Division of higher scale.

The higher scale is divided into three columns, A, B, and C, which apply respectively, where the subject-matter or the sum recovered exceeds £10 and does not exceed £20, where it exceeds £20 and does not exceed £50, and where it exceeds £50, with similar exceptions as in the case of the lower scale (*w*).

Discretion as to scale.

The judge may award costs on any scale higher than that which otherwise would be applicable to the plaintiff on any amount recovered, however small, or to a defendant who successfully defends an action brought for any amount, however small, provided that the judge certifies in writing that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons or public interest (*a*).

Time for application.

1381. The application for costs under this provision must be made at or immediately after the trial, and if not so made must not afterwards be entertained, unless the judge for good cause otherwise orders, or unless the judge is satisfied that the omission to make the application in due time was due to mistake or inadvertence, in which case he may, on such terms as he may think fit, entertain an application at a later date (*b*).

Certificate of judge.

A certificate under this power should follow the words of the section (*c*). It is not sufficient for the judge to certify that the action involved a question of character (*d*), for he has no power to certify except in accordance with the section (*e*), and this applies to the City of London Court in the same way as it does to other county courts (*f*).

If the certificate follows the words of the statute, but does not specify the grounds on which it is given, it has not been decided whether on affidavit the court above will inquire into the sufficiency of the certificate (*g*).

The procedure for objecting to a certificate granting costs on a higher scale is by way of prohibition (*h*).

(*t*) See *infra*.
(*u*) See p. 585, *post*.
(*w*) The costs of actions brought under the extended jurisdiction of the court conferred by the County Courts Act, 1903 (3 Edw. 7, c. 42), namely, where the sum claimed is between £50 and £100, are to be taxed in accordance with the rules and scales in force, with certain modifications; see p. 590, *post*.
(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 119. This power is only applicable as between party and party, and not as between solicitor and client (*Re Langlois and Biden*, [1891] 1 Q. B. 349, C. A.).
(*b*) County Court Rules, Ord. 53, r. 7.
(*c*) *R.* v. *City of London Court Judge* (1886), 18 Q. B. D. 105, *per* STEPHEN, J., at p. 106.
(*d*) *Ibid.*
(*e*) *Howard* v. *Graves* (1885), 52 L. T. 858.
(*f*) *Ibid.*
(*g*) *R.* v. *City of London Court Judge* (1886), 18 Q. B. D. 105.
(*h*) *Ibid.*

SECT. 1. General Principles.

Entry of certificate.

1382. The certificate of the judge must be entered at the end of the minutes of the court of the day on which it is given, and must be signed by the judge (*i*). This regulation, however, does not prevent the minute being signed by the judge on a subsequent day to that on which the order was made, so long as an entry is made at the end of the minutes of the day on which the order was made (*k*).

Claim for unliquidated damages.

Where the plaintiff's claim is for unliquidated damages the judge has power, if the plaintiff recovers less than the amount claimed, to order that his costs be taxed on the scale applicable to the amount claimed or to any intermediate scale (*l*).

Actions for special damage against landlord.

1383. In actions claiming special damage in respect of irregularity or informality in proceedings by landlords to obtain possession where not more than 5*s.* is recovered the judge has power to certify that in his opinion full costs ought to be allowed (*m*). An application for full costs in such a case must be made in the same manner as an application for costs on a higher scale (*n*).

SUB-SECT. 3.—*Discretion as to particular Items.*

Particular items.

1384. Certain particular items in the scale of costs and other particular costs are only to be allowed where the judge makes a special order allowing them (*o*), upon consideration of the facts of the particular case. The application to allow them must be made

(*i*) County Court Rules, Ord. 53, r. 9.
(*k*) *Badcock* v. *Hunt* (1889), 38 W. R. 255.
(*l*) County Court Rules, Ord. 53, r. 17.
(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 145.
(*n*) County Court Rules, Ord. 53, r. 7.
(*o*) These items are allowable under *ibid.* r. 8, in actions where the parties give the county court jurisdiction by consent, in remitted actions, in actions under the extended jurisdiction, in equitable actions, in actions of title, in proceedings under the Money-lenders Act, 1900 (63 & 64 Vict. c. 51), and in actions under some of the special statutes conferring jurisdiction on the county court, as to which, see p. 622 *et seq.*, *post*. They include Nos. 31 and 70 in the scales of costs (preparation of minutes and attending court without counsel); No. 86 (special fee to counsel where no local bar within twenty miles); No. 93 (counsel's fee for settling particulars, defence, reply, interrogatories, or other matters required); No. 3 (drawing petition or reply in Admiralty); No. 91 (counsel's fee on interlocutory motions etc.); No. 92 (counsel's fee or brief before arbitrator, or on inquiries and Admiralty references before the registrar); No. 94 (advice on evidence); No. 95 (places, charts, and models for use of the judge at the trial). In case the amount claimed or recovered, as the case may be, exceeds £2 and does not exceed £10, counsel's fee and increase of item No. 4; also further costs properly incurred by the plaintiff before receiving notice of payment into court by the defendant of the debt and costs, although such payment may have been made five clear days before the day of trial (County Court Rules, Ord. 9, r. 13); costs of and incident to an interlocutory application (County Court Rules, Ord. 12, r. 11; see p. 592, *post*); allowance to plaintiff as a witness (County Court Rules, Ord. 53, r. 38; see p. 596, *post*); allowances to expert or scientific witness (County Court Rules, Ord. 53, r. 43; see p. 596, *post*); on hearing a judgment summons the costs referred to in County Court Rules, Ord. 2[illegible] rr. 53, 54. In actions of the above-named nature and where the judge certifies for a higher scale (see p. 581, *ante*), the registrar has a discretion to increase fees to counsel subject to review by the judge in items Nos. 70—73, 85—94, but only when taxed under column C (County Court Rules, Ord. 53, r. 8 (3)).

immediately after the trial or hearing, and if not so made cannot afterwards be entertained, unless the judge for good cause otherwise orders, or unless the judge is satisfied that the omission to make the application in due time was due to mistake or inadvertence, in which case he may, upon such terms as he may think fit, entertain an application at a later date (*p*).

Costs of unnecessary matter.

1385. The judge has also power, at the hearing of any action or matter, or upon any application or proceeding in any action or matter, and whether the same is objected to or not, to direct disallowance of the costs, or direct the registrar to look into the matter and disallow the costs of any affidavit, evidence, notice, or other proceeding or any part thereof, which, in the opinion of the judge or registrar, as the case may be, is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or is caused by misconduct or negligence; and in such case the party whose costs are so disallowed must pay the costs occasioned thereby to the other parties (*q*).

SECT. 2.—*Costs of Parties not employing a Solicitor.*

Parties in person or unqualified representatives to have no costs.

1386. As solicitors only are entitled to have or recover any fee or reward for acting on behalf of any other party in any proceeding in a county court (*r*), parties appearing in person, or by leave of the judge by some other person, not being the solicitor acting generally in the action or counsel retained by him, can recover no other costs than the court fees (*s*) and the costs of witnesses and their travelling expenses (*t*), and in some cases, by order of the judge, an allowance for the plaintiff's attendance (*a*).

No action for costs by unqualified representative.

1387. Persons other than solicitors appearing for any party to an action cannot sue for court fees paid by them, or for services in the action rendered out of court (*b*). It seems, however, that this does not apply to services rendered out of court before the commencement of the action (*c*).

SECT. 3.—*Costs where a Solicitor is employed.*

SUB-SECT. 1.—*Costs between Party and Party.*

Signature of particulars by solicitor.

1388. Where a plaintiff sues by solicitor the particulars must be signed by the solicitor in his own name or that of his firm, and he must state on the particulars his place of business and where he will accept service of proceedings in the action or matter on

(*p*) County Court Rules, Ord. 53, r. 7.
(*q*) *Ibid.*, r. 33.
(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 72; see p. 526, *ante*.
(*s*) See p. 526, *ante*.
(*t*) See p. 595, *post*.
(*a*) See p. 596, *post*.
(*b*) *Verlander* v. *Eddolls* (1881), 51 L. J. (Q. B.) 55. As to the employment of a solicitor who has no certificate, see p. 584, *post*.
(*c*) *Re Toby* (1850), 19 L. J. (Q. B.) 503. As to solicitors, who are plaintiffs or defendants, appearing in person, see p. 584, *post*.

SECT. 3.
Costs where a Solicitor is employed.

behalf of the plaintiff, otherwise the costs of entering the plaint by solicitor (*d*) must not be allowed (*e*).

Particulars entered on a lithographed form, having at the foot the name and address of the solicitor, are not signed by the solicitor so as to entitle him to the costs of entering the plaint (*f*).

The clerk of a solicitor, if duly authorised, may sign the particulars on behalf of and in the name of his master (*g*).

Insufficient particulars.

1389. If in the opinion of the court the particulars are insufficient, the costs of entering the plaint by solicitor must not be allowed unless the court otherwise orders (*h*). It would seem that an order of the court to allow the costs of entering the plaint by solicitor is an order for the allowance of particular costs under the County Court Rules, and therefore an application for such an order must be made at the prescribed time (*i*).

Solicitor without certificate.

1390. A party employing a solicitor who has not taken out or renewed his certificate, cannot, although he succeeds in the action, recover from the other party the costs and disbursements of the solicitor (*k*).

Party *in formâ pauperis*.

1391. A person admitted to sue or defend *in formâ pauperis*, if successful, is, unless the judge in the exercise of his judicial discretion (*l*) deprives him of costs, entitled to costs out of pocket only, and cannot be allowed any remuneration for his solicitor or fees for counsel (*m*).

Solicitor as party.

1392. A solicitor, who is a plaintiff or defendant, and appears in person and is allowed costs, is entitled to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary (*n*).

Costs of solicitor where counsel employed but not allowed.

1393. Where a party appearing by counsel is allowed costs, but the costs of employing counsel are not allowed, the costs of the solicitor instructing counsel may be allowed upon the scale which would have been applicable if the solicitor had appeared for his client without counsel (*o*).

(*d*) Lower scale items Nos. 1, 2; higher scale item No. 1. As to the employment of solicitors generally, see title SOLICITORS.

(*e*) County Court Rules, Ord. 6, r. 9.

(*f*) *R.* v. *Cowper* (1890), 24 Q. B. D. 533, C. A., where the court was equally divided, so the judgment of the Divisional Court ((1889) 24 Q. B. D. 60) stood, Lord ESHER, M.R., holding that the signature was sufficient, and FRY, L.J., being of the contrary opinion.

(*g*) County Court Rules, Ord. 6, r. 9. This provision follows the decision in *France* v. *Dutton*, [1891] 2 Q. B. 208.

(*h*) County Court Rules, Ord. 6, r. 9.

(*i*) County Court Rules, Ord. 53, r. 7; see p. 581, *ante*.

(*k*) By reason of the Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12; *Fowler* v. *Monmouthshire Canal Co.* (1879), 4 Q. B. D. 334, where the client was ignorant of the fact that his solicitor had not taken out his certificate.

(*l*) See p. 578, *ante*.

(*m*) *Carson* v. *Pickersgill & Sons* (1885), 14 Q. B. D. 859, C. A.; *Richardson* v. *Richardson*, [1895] P. 346, C. A.; *White* v. *White*, [1898] P. 124.

(*n*) County Court Rules, Ord. 53, r. 25. This rule is based on the decision in *London Scottish Benefit Society* v. *Chorley* (1884), 13 Q. B. D. 872, C. A.

(*o*) County Court Rules, Ord. 53, r. 26. Under this rule item No. 64 may be

Costs where a Solicitor is employed.

1394. A solicitor employed in a case is not entitled to recover from his client any costs or charges not sanctioned by the scale in force, except where the client has agreed in writing to pay them (*p*).

Discretion as to scale.

On a taxation between solicitor and client, if the amount recovered by a plaintiff is such that the scale appropriate to that amount is a lower one than that appropriate to the amount of the claim, the registrar has power to allow the solicitor costs on the scale appropriate to the claim, or on any intermediate scale (*q*). The judge has no jurisdiction under his discretion to award costs on a higher scale (*r*), to order that as between solicitor and client the costs shall be governed by a higher scale (*s*).

It would seem that it is not possible for a solicitor to recover any additional costs on the ground that they were not incurred in the conduct of the case (*a*).

Costs of public authority.

1395. Where under the Public Authorities Protection Act, 1893 (*b*), a public authority is entitled to costs as between solicitor and client, these costs, in the case of an action in the county court, are the costs authorised by the scale in force in the county court as between solicitor and client (*c*).

allowed in place of item No. 65 (attendance on an interlocutory application or motion) and item No. 69 or 70 in place of item No. 71 (attendance at court on trial).

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 118.

(*q*) *Re Langlois and Biden*, [1891] 1 Q. B. 349, C. A., *per* Lord ESHER, M.R., at p. 357: "If a solicitor knows, or if he ought, by making ordinary inquiries and taking ordinary care, to know, that his client cannot possibly recover more than £10, he ought not to bring an action for more than £10; and if, with such knowledge or means of knowledge, he were to bring an action claiming more than £10, not only would it be very disgraceful conduct on the part of a solicitor, but I think that when the costs came to be taxed the master would exercise his discretion in not allowing the solicitor costs beyond the lower scale. But on the other hand if the client by his wilfulness or by his reticence, conceals from the solicitor, or does not give the solicitor the means of knowing, that he cannot recover more than £10 . . . In such a case if the client only recovers £10 or less, I think the taxing officer would exercise his discretion by allowing the costs, as between the solicitor and the client, on the higher scale."

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 119.

(*s*) *Re Langlois and Biden, supra, per* Lord ESHER, M.R., at p. 357: "In my opinion s. 119 does not apply to a taxation between solicitor and client."

(*a*) For the reason that in the present Act (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 118) the direction that no costs or charges not sanctioned by the scale in force is not qualified, as it was in the former Act (County Courts Act, 1856 (19 & 20 Vict. c. 108), s. 36), by the words "in the conduct of the case." See *Re Dod, Longstaffe & Co., Ex parte Lamond* (1888), 21 Q. B. D. 242, where it was held that it was a question of fact to be decided by the taxing officer whether the solicitors had acted "in the conduct of the action," and that if they had they could not recover more than the scale costs, but if they had not so acted they could.

(*b*) 56 & 57 Vict. c. 61, ss. 1, 2.

(*c*) *Tory* v. *Dorchester Corporation*, [1907] 1 K. B. 393. As to the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), see titles LIMITATION OF ACTIONS; PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

SECT. 4. Remitted Actions.

SECT. 4.—*Remitted Actions.*

Allowance of costs in remitted actions.

1396. Where an action, either of contract or tort, commenced in the High Court is remitted to the county court (*d*) the costs of the parties subsequent to the order remitting it must be allowed according to the scales of costs for the time being in use in the county courts (*e*), and the costs of the order and all proceedings previously thereto according to the scale of costs for the time being in use in the Supreme Court (*f*).

Costs in interpleader or equity proceeding remitted.

1397. Where any proceeding by way of interpleader (*g*), or any action or matter pending in the Chancery Division is ordered to be transferred from the High Court to a county court (*h*), and no order to the contrary has been made in the High Court, the costs of the order and of the proceedings prior thereto are in the discretion of the judge of the county court, and are to be taxed in the county court upon such scale, whether of the High Court or the county court, as the judge may think just. The costs in the county court are in the discretion of the judge, and are to be taxed on such county court scale as he may think just (*i*).

Rules as to costs in remitted actions.

1398. The provisions as to the costs of actions founded on contract and tort (*k*) must be read with the enactment as to actions within the jurisdiction of county courts (*l*). With regard to actions commenced in the High Court which could have been commenced in the county court, if in an action founded on contract a plaintiff recovers less than £20 or in an action founded on tort (*m*) less than £10, he is not entitled to any costs, while if he recovers less than £100 in an action founded on contract or less than £20 in an action founded on tort, he is not entitled to any more costs than he would have been entitled to if the action had been brought in a county court (*n*). The combined effect of these enactments on remitted actions which could have been commenced in the county court is as follows:—If less than £20 is recovered in contract (*o*), or less than £10 in tort, the plaintiff is not entitled to

(*d*) See p. 438, *ante;* County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 66

(*e*) See p. 580, *ante.*

(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 66.

(*g*) See title INTERPLEADER.

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 69.

(*i*) County Court Rules, Ord. 33, r. 16.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 66.

(*l*) See p. 428, *ante.*

(*m*) As to the distinction between actions founded on contract and actions founded on tort, see title ACTION, Vol. I., pp. 48 *et seq.*

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116, as extended by County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3. This section applies to all actions which are of a kind and for an amount which are within the jurisdiction of the county court (*Chatfield* v. *Sedgwick* (1879), 4 C. P. D. 459, C. A.; *Solomon* v. *Mulliner*, [1901] 1 K. B. 76, C. A.), but does not apply to actions which could not have been brought in the county court (*Saywood* v. *Cross* (1884), 14 Q. B. D. 53).

(*o*) *White* v. *Cohen*, [1893] 1 Q. B. 580, C. A., where it was held that s. 65 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), only applies as modified by s. 116, and that where an action is commenced in the High Court, and after certain proceedings therein is remitted to the county court, and less than £20

any costs; if £20 is recovered in contract, but less than £100, or if £10 is recovered in tort, but less than £20, the plaintiff is entitled to county court costs both in the High Court (*p*) and in the county court. Subject to these rules the general discretion of the judge of the county court (*q*) applies to remitted actions as well as to actions commenced in a county court (*r*).

Effect of judgment under R. S. C., Ord. 14.

1399. Where, however, the plaintiff in an action founded on contract within twenty-one days after the service of the writ, or within such further time as may be ordered on summons, obtains an order in the High Court (*s*) empowering him to enter judgment for a sum of £20 or upwards, and the remainder of his claim is remitted to the county court for trial, he is entitled to costs of and prior to the order to remit on the High Court scale (*t*). In an action founded on contract if the High Court orders judgment to be signed for less than £20 and remits the remainder of the claim to the county court for trial and the whole amount recovered is less than £100, the whole costs of the action are recoverable on the county court scale applicable to the whole amount recovered as calculated by adding the amount recovered in the High Court to that recovered in the county court (*a*). This rule also applies to cases where an amount is recovered in the High Court by payment (without any order or judgment of the court) after appearance and before judgment (*b*); or by payment under an order to sign final judgment unless so much is paid within so many days (*c*).

Defendant's costs.

Where on an application for summary judgment in the High Court (*d*) the plaintiff recovers part of his claim and the remainder

is recovered in the county court, the plaintiff is not entitled to any costs of the action. Nor can a successful plaintiff recover the costs incidental to the order to remit where his claim in the High Court could have been originally commenced in the county court and the whole case has been remitted to the county court (*Simpson* v. *Parsons* (1904), 48 Sol. J. 622). It is submitted that the decision in *White* v. *Cohen*, [1893] 1 Q. B. 580, C. A., is wrong, and that s. 116 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), should not apply at all to remitted actions, the costs of which are definitely provided for in s. 65. In practice the principle of *White* v. *Cohen*, *supra*, is applied as taking away the discretion of the county court judge over costs incurred in the county court in cases where the amount recovered and the facts are similar to those in that case.

(*p*) *Wilson* v. *Statham*, [1891] 2 Q. B. 261; see also *Cook* v. *Crews* (1894), 10 R. 345.

(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113; see p. 578, *ante*.

(*r*) *Everall* v. *Brown*, [1905] 2 K. B. 196, *per* Lord ALVERSTONE, C.J., at p. 198: "I see no reason why the general discretion given by s. 113 should not apply to remitted actions as well as to actions commenced in the county court." This discretion covers High Court costs where a successful defendant pays money into the county court after remission of the action without denying liability (*Bennett* v. *Drake* (1907), 23 T. L. R. 533). This must be distinguished from the case of *Simpson* v. *Parsons*, *supra*.

(*s*) R. S. C., Ord. 14, r. 1.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116; *Barker* v. *Hempstead* (1889), 23 Q. B. D. 8; *Woodin* v. *Bailey* (1894), 98 L. T. Jo. 89 (a decision of a county court judge).

(*a*) *Wilson* v. *Statham*, *supra*; *White* v. *Headland's Patent Electric Storage Battery Co.*, [1899] 1 Q. B. 507, C. A.

(*b*) *Pearce* v. *Bolton*, [1902] 2 K. B. 111.

(*c*) *Keeble* v. *Bennett*, [1894] 2 Q. B. 329.

(*d*) Under R. S. C., Ord. 14.

SECT. 4. Remitted Actions.

of the claim is remitted to the county court, and the defendant succeeds as to the remitted part of the claim, then the recovery by the plaintiff of part of his claim in the High Court is the event, which covers the question of costs, and the defendant is not entitled to any costs in the absence of a special order of the judge (*e*); but if the judge makes a special order giving him costs, he is entitled to his costs, to be taxed on the scale appropriate to the whole amount of the claim (*f*).

Special items in remitted actions.

1400. In remitted actions the judge has power, in his discretion, to order that certain items (*g*) be allowed to the party in whose favour an order is made, in addition to or in substitution for, as the case may be, the costs to which he would otherwise be entitled (*h*), and where the costs are taxed on scale C (*i*), in cases in which there is a real contest or where the judge certifies in writing that the action involves some novel or difficult point of law or is of importance to some class or body of persons or is of public or general interest, the fees allowed to solicitors for attending in court with or without counsel (*k*) may be increased at the discretion of the registrar, subject to review by the judge or by special order of the judge. Where proceedings are taken for which no provision is made by the rules or scales of costs, reasonable costs may be allowed therefor by the registrar, subject to review by the judge or by special order of the judge, not exceeding those which under the scales or rules may be allowed in proceedings of like nature (*l*).

SECT. 5.—*Particular Cases.*

SUB-SECT. 1.—*Equitable Actions and Matters.*

Discretion in equitable actions.

1401. In equity actions and matters (*m*) (including actions under the Money-lenders Act, 1900 (*n*)) the judge has a judicial discretion vested in him as to costs (*o*), and in addition has power where the subject-matter does not exceed £20 to order the costs to be taxed under column B of the higher scale (*p*).

(*e*) *Wright & Son* v. *Bull*, [1900] 2 Q. B. 124.

(*f*) *Aston Tube Works, Ltd.* v. *Dumbell*, [1904] 1 K. B. 535. To avoid the result arrived at in *Wright* v. *Bull*, *supra*, a special order should be asked for in such a case. See also, *M'Eachen & Co.* v. *Sallyco Mineral Water Co.* (1903), 19 T. L. R. 208.

(*g*) Items Nos. 31, 70, 86, and 93 of the higher scale (preparation of minutes of fact or argument where no counsel employed, attendance at court conducting case without counsel, additional fee to counsel where no local bar, and counsel's fee for settling pleadings, interrogatories etc.).

(*h*) County Court Rules, Ord. 53, r. 8.

(*i*) See p. 581, *ante*.

(*k*) Items Nos. 70 to 73; item No. 70 (attendance at court conducting case without counsel) may be increased to £5 5*s*.; items Nos. 71 to 73 (attendance at court on trial with counsel and on adjournments) to £3 3*s*.

(*l*) County Court Rules, Ord. 53, r. 8 (3).

(*m*) As to what proceedings are comprised under equity actions and matters, see p. 443, *ante*.

(*n*) 63 & 64 Vict. c. 51. This is by reason of County Court Rules, Ord. 53, r. 8 (2), which was added to the rules in 1908.

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113.

(*p*) County Court Rules, Ord. 53, r. 12; as to column B, see p. 581, *ante*.

Administration actions.

1402. In the case of administration actions the judge has absolute discretion over the costs, and is not bound by the old rule of equity that where an administration action is properly brought the plaintiff is entitled to his costs (*q*); but an administrator ought to be allowed the general costs of an administration action, even where the greater part of his claim for expenses of realisation has been disallowed, if the claim was not improper, dishonest, or monstrous (*r*).

Special items.

1403. In any action or matter commenced under the equity jurisdiction of the court the judge has power, in his discretion (*s*), to order that certain items (*t*) shall be allowed to the party in whose favour the order is made, in addition to or in substitution for, as the case may be, the costs to which he would otherwise be entitled (*a*). Such an order must be applied for at the prescribed time (*b*). Where the costs are taxed on scale C in cases in which there is a real contest, or the judge certifies under s. 119 of the County Courts Act (*c*), the fees for the attendance in court of solicitors, with or without counsel, may be increased (*d*) at the discretion of the registrar, subject to review by the judge, or by special order of the judge. Where proceedings are taken for which no provision is made by the scales or rules, reasonable costs may be allowed therefor by the registrar, subject to review by the judge or by special order of the judge, not exceeding those which may under the scales or rules be allowed in respect of proceedings of a like nature (*e*).

Receiver.

1404. On the appointment of a receiver by way of equitable execution the costs, exclusive of the receiver's allowance but inclusive of the costs of obtaining the appointment, completing his security, passing his accounts, and obtaining his discharge, are, where the amount of the debt and costs exceeds £50 but does not exceed £100, not to exceed 2½ per cent. of the amount of the debt and costs; where the amount of the debt and costs exceeds £20 but does not exceed £50, these costs are not to exceed £1 5*s.*; where the amount of the debt and costs exceeds £5 but does not exceed £20, these costs are to be such sum as the judge shall direct, not being less than 7*s.* 6*d.* nor exceeding £1 (*f*).

(*q*) *Plumb* v. *Craker* (1885), 16 Q. B. D. 40; *Re Samson, Robbins* v. *Alexander*, (1907), 123 L. T. Jo. 86, C. A., where the plaintiffs, who were creditors, had been warned that the estate was insolvent and were ordered to pay the costs of the action and of the appeal.

(*r*) *Re Jones, Christmas* v. *Jones* (1897), 66 L. J. (CH.) 439.

(*s*) Under County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113; see p. 582, *ante*.

(*t*) Items Nos. 31, 70, 86, 93, of the higher scale (preparation of minutes of fact or argument where no counsel employed, attendance at court conducting case without counsel, additional fee to counsel where no local bar, and counsel's fee for settling pleadings, interrogatories etc.).

(*a*) County Court Rules, Ord. 53, r. 8.

(*b*) See p. 581, *ante*.

(*c*) 51 & 52 Vict. c. 43.

(*d*) Items Nos. 70 to 73; item No. 70 (attendance at court where no counsel employed) may be increased to £5 5*s.*; and items Nos. 71 to 73 (attendance at court on trial with counsel, and on adjournments) to £3 3*s*

(*e*) County Court Rules, Ord. 53, r. 8 (3).

(*f*) *Ibid.*; County Court Rules, Ord. 13, r. 14.

SECT. 5. Particular Cases.

Where a receiver is appointed under the Partnership Act, 1890, the judge may give all requisite directions as to costs (*g*).

Where a receiver is appointed generally under the equitable jurisdiction of the court, the order appointing him may deal with the costs; the judge has apparently power to order the costs to be on scale B (*h*). If a receiver is in default and the judge discharges him, the judge may make such order as to costs as may be proper (*i*).

SUB-SECT. 2.—*Actions under the extended Jurisdiction.*

Costs under extended jurisdiction.

1405. The costs of actions brought under the extended jurisdiction (*k*) of the court must be allowed and taxed according to the rules and scales of costs for the time being in force. In any such action the judge has power in his discretion (*l*) to order that certain items (*m*) shall be allowed to the party in whose favour the order is made in addition to or substitution for, as the case may be, the costs to which he would otherwise be entitled (*n*). This order must be applied for at the prescribed time (*o*). The total amounts to be entered on a default summons and an ordinary summons respectively are increased (*p*).

SUB-SECT. 3.—*Third Parties.*

Costs where third party.

1406. The judge has jurisdiction to decide all questions of costs, as between a third party and the other parties to an action, and to order any one or more to pay the costs of any other or others, or to give such directions as to costs as the justice of the case may require (*q*).

Taxation of third party costs.

Where an order is made for payment of costs by or to a third party, any costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in addition to the costs of the original action by reason of such third party having been brought in, in respect of the trial of the question of the liability of the third party, or in preparing for such trial, may be allowed, and such costs must be taxed as if the third party were a defendant, and the party to or by whom such costs are ordered to be paid were a plaintiff, and as if the notice to the third party were a summons with particulars annexed (*r*).

(*g*) 53 & 54 Vict. c. 39, s. 23 (2).
(*h*) County Court Rules, Ord. 53, r. 12.
(*i*) County Court Rules, Ord. 13, r. 12.
(*k*) Conferred by County Courts Act, 1903 (3 Edw. 7, c. 42); see p. 428, *ante*.
(*l*) Under County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113; see p. 578, *ante*.
(*m*) Items Nos. 31, 70, 86, 93 of the higher scale; and also items Nos. 70, 71, 72, 73.
(*n*) County Court Rules, Ord. 22A, r. 27; Ord. 53, r. 8.
(*o*) See p. 581, *ante*.
(*p*) County Court Rules, Ord. 22A, r. 27.
(*q*) County Court Rules, Ord. 11, r. 5. As to third parties, see p. 491, *ante*.
(*r*) County Court Rules, Ord. 53, r. 18A. This rule was introduced in 1904.

SECT. 5. Particular Cases.

1407. The limitations on the costs in a remitted action depending on the amount recovered (*s*), do not apply as between a defendant and a third party (*t*).

Nonsuit.

1408. Where the plaintiff is nonsuited he may be ordered to pay the costs of a third party brought in by the defendant (*u*).

Payment without notice to defendant.

1409. If a third party pays the plaintiff without appearing or giving notice to the defendant, he may be ordered to pay the defendant's costs (*a*).

Admission of liability to defendant.

1410. Where a third party admits his liability to the defendant, and the third party is not made a defendant and files no defence, and practically fights the action appearing by the same counsel as the defendant, an order to pay the successful plaintiff's costs ought to be made against him as well as against the defendant (*b*).

SUB-SECT. 4.—*Detinue.*

Costs in detinue.

1411. In actions of detinue, although the assessment of value of the goods detained is not a condition precedent to the making of an order for the return of the goods claimed (*c*), the value should be ascertained and adjudged (*d*) or fixed by agreement between the parties (*e*), because the value added to the damages for the detention determines the scale on which the costs must be taxed (*f*).

In the case of remitted actions of detinue the costs are governed by the limitations (*g*) applicable to actions of tort (*h*).

SUB-SECT. 5.—*Ejectment and Real Property Actions.*

Increased costs in actions of title.

1412. In the case of actions of ejectment or actions in which the title to any corporeal or incorporeal hereditament comes in question which are within the jurisdiction of the county court (*i*), the judge has power to order the costs to be in accordance with one of the columns of the higher scale, and in default of any such order they must be taxed under column B of that scale (*k*).

Special items.

The judge has also jurisdiction in such actions to order that certain items (*l*) shall be allowed to the party in whose favour the order is made, in addition to or in substitution for, as the case may

(*s*) See County Courts Act (51 & 52 Vict. c. 43), s. 116; and p. 586, *ante*.
(*t*) *Bates* v. *Burchell*, [1884] W. N. 108.
(*u*) *Barbrooke* v. *Moore* (1889), 88 L. T. Jo. 155 (a decision of a county court judge).
(*a*) *Jablochkoff Electric Light Co.* v. *McMurdo*, [1884] W. N. 94.
(*b*) *Edison and Swan United Electric Light Co.* v. *Holland* (1889), 41 Ch. D. 28, C. A.
(*c*) *Hymas* v. *Ogden*, [1905] 1 K. B. 246, C. A.
(*d*) See *Chilton* v. *Carrington* (1855), 15 C. B. 730.
(*e*) *Winfield* v. *Boothroyd* (1885), 54 L. T. 574.
(*f*) *Bryant* v. *Herbert* (1878), 3 C. P. D. 389, C. A.
(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116.
(*h*) *Bryant* v. *Herbert*, *supra*.
(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 59, 60, 61; see p. 435, *ante*.
(*k*) County Court Rules, Ord. 53, r. 11.
(*l*) Items Nos. 31, 70, 86, 93 of the higher scale.

SECT. 5. Particular Cases.

be, the costs to which he would otherwise be entitled (*m*). Where the costs are taxed under scale C, in cases in which there is a real contest or the judge so certifies (*n*), certain fees allowed to solicitors may be increased (*o*) at the discretion of the registrar, subject to review by the judge or by special order of the judge.

Reasonable costs may be allowed for proceedings for which no provision is made by the scales or rules (*p*).

Scale applicable in recovery of tenements.

1413. In actions for the recovery of small tenements, where the term has expired or has been determined by notice (*q*), or for non-payment of rent (*r*), the costs must be taxed, in the case of a plaintiff, on the scale applicable to the rent or value of the premises upon which the court fees are assessed, plus the amount of any rent and mesne profits recovered; and in the case of a defendant on that applicable to the said rent or value, plus the amount of the rent and mesne profits claimed (*s*).

SUB-SECT. 6.—*Injunctions.*

Scale of costs in injunctions.

1414. In actions in which a perpetual injunction is claimed, whether the same is granted or not, the judge has power to order the costs to be-taxed under any one of the columns of the higher scale, and in default of any such order they must be taxed under column B of that scale (*t*). Where in the same action there is a claim for a perpetual injunction and also a claim for other relief, and the plaintiff fails as to the injunction and recovers less than £10 on the other part of his claim, this rule does not apply, and the costs must be taxed on the lower scale (*a*). If between the issue of the plaint and the hearing the defendant does all that the plaintiff claims to compel him to do by an injunction, and consequently an injunction is not asked for at the hearing, the plaintiff is entitled to his costs as if an injunction had been granted (*b*). Where an interim injunction is granted, the practice is to reserve the costs until the trial.

Remitted action.

In the case of remitted actions the limitation of costs imposed by the County Courts Act, 1888 (*c*), does not apply where an injunction is claimed and granted and less than £10 damages is recovered (*d*).

SUB-SECT. 7.—*Miscellaneous Proceedings.*

Interlocutory proceedings.

1415. The costs of and incident to interlocutory applications are in the discretion of the judge or the registrar, as the case

(*m*) County Court Rules, Ord. 53, r. 8.
(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 119.
(*o*) For details, see note (*o*), p. 582, *ante*.
(*p*) County Court Rules, Ord. 53, r. 45 (3).
(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 138.
(*r*) *Ibid.*, s. 139.
(*s*) County Court Rules, Ord. 53, r. 13.
(*t*) *Ibid.*, r. 11.
(*a*) *Clinton* v. *Bennett*, [1908] 1 K. B. 109.
(*b*) *Doherty* v. *Thompson* (1906), 94 L. T. 626, C. A.
(*c*) 51 & 52 Vict. c. 43, s. 116; see p. 586, *ante*.
(*d*) *Keates* v. *Woodward*, [1902] 1 K. B. 532, C. A.; *Doherty* v. *Thompson*, *supra*.

may be, and no such costs are allowed on taxation without a special order (*e*); where an order is made for taxation of the costs of the application, before taxation of the general costs of the order or matter, the amount claimed in the action determines the scale of costs applicable, but in all cases where more than £20 is claimed column B of the higher scale applies to the exclusion of column C (*f*).

Refusal to admit facts.

1416. If either party refuses or neglects to admit any specific fact or facts mentioned in a notice to admit facts, properly served, the costs of proving such facts must be paid by the party refusing or neglecting in any event, unless at the trial the court certifies that the refusal to admit was reasonable, or unless the court at any time otherwise orders (*g*). To exonerate the party who, in pursuance of such a notice, admits the facts in question from payment of the costs of proving them, he must give such a clean admission that it dispenses with proof (*h*).

After payment into court.

1417. If the defendant pays money into court five clear days before the return day in satisfaction of the plaintiff's claim, with costs on that sum, and the plaintiff does not accept that sum but elects to proceed and recovers no further sum in the action or matter than has been paid into court, he must pay to the defendant the costs incurred by him in the action or matter after such payment, and such costs must be settled by the court and an order thereupon made by the court for the payment of such costs by the plaintiff (*i*).

Where the payment into court is made less than five clear days before the return day, or without costs (*k*), if the plaintiff does not elect to accept the money so paid in satisfaction he may proceed as if no such payment had been made, and, unless the court otherwise orders (*l*), he is entitled to costs on such sum as he may recover, whether such sum be less than the sum paid into court or not (*m*).

Where counterclaim tried.

1418. When a counterclaim is set up and tried the principles on which costs are awarded are as follows :—If either party succeeds on both claim and counterclaim, that party is entitled to his costs on the appropriate scale (*n*). If, however, the subject-matter of the counterclaim is entirely unconnected with that of the claim, items of costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in respect of the counterclaim or claim (as the case

(*e*) County Court Rules, Ord. 12, r. 11 (4).

(*f*) *Ibid.*, r. 11 (6). As to columns B and C of the higher scale, see p. 581, *ante*.

(*g*) County Court Rules, Ord. 9, r. 8.

(*h*) *Pincott* v. *Letts* (1897), 77 L. T. 160.

(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 107. As to payment into court, see p. 493, *ante*.

(*k*) See *Sykes* v. *Wesleyan and General Assurance Society* (1907), 76 L. J. (K. B.) 626.

(*l*) Under the judge's discretion given by County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113; see p. 578, *ante*.

(*m*) County Court Rules, Ord. 9, r. 12 (4).

(*n*) As to scales of costs, see p. 581, *ante*.

SECT. 5. Particular Cases.

may be), in addition to those incurred or paid in respect of the claim or counterclaim, may be allowed by the judge.

If both parties are successful or both parties are unsuccessful, each party is entitled to his costs of the claim or counterclaim (as the case may be) on which he succeeds (*o*).

Executors and administrators.

1419. In actions by executors or administrators, if the plaintiff fails the costs must, unless the court otherwise orders, be awarded in favour of the defendant, and are levied *de bonis propriis* (*p*).

SUB-SECT. 8.—*Actions tried by Consent.*

Actions tried by consent.

1420. In the case of actions assigned to the King's Bench Division of the High Court tried in the county court by consent of the parties (*q*) the costs must be taxed under column C of the higher scale, unless the judge otherwise orders (*r*).

SUB-SECT. 9.—*Counsel's Fees.*

Counsel's fees.

1421. In the case of actions where the costs are taxed on the higher scale, the fee paid with the brief is allowed, but is not to exceed the maximum amounts set out in the three columns of the scale. This maximum is not to be allowed as of course, but the length of the brief, documents to be perused, number of witnesses, and difficulties of fact or law involved are to be considered (*s*). In actions under the extended jurisdiction of the court, *i.e.*, where the sum claimed or the subject-matter is above £50 and does not exceed £100, the fees fixed by scale C may be increased (*t*).

Special items.

1422. Where the costs in actions under s. 64 of the County Courts Act (*a*) or remitted from the High Court, or under the Admiralty or equitable jurisdiction of the court, or of ejectment, or relating to the title to real property, or under the Money-lenders Act, 1900 (*b*), or under the Employers' Liability Act, 1880 (*c*), or actions to recover the expenses of extraordinary traffic (*d*), are taxed on scale C, and there is a real contest, or the judge certifies under s. 119 of the County Courts Act (*e*), the fees allowed to counsel may be increased (*f*) by the registrar, subject to review by the judge or by special order of the judge (*g*). In the case of actions exceeding the jurisdiction tried in the county court by consent of the parties (*h*), employers' liability actions, remitted actions, Admiralty

(*o*) County Court Rules, Ord. 53, r. 16.
(*p*) County Court Rules, Ord. 30, r. 1.
(*q*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 64.
(*r*) County Court Rules, Ord. 53, r. 14.
(*s*) Higher scale, item No. 85.
(*t*) County Court Rules, Ord. 22A, r. 27 (3).
(*a*) 51 & 52 Vict. c. 43.
(*b*) 63 & 64 Vict. c. 51.
(*c*) 43 & 44 Vict. c. 42.
(*d*) Under s. 23 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), as amended by s. 12 of the Locomotives Act, 1898 (61 & 62 Vict. c. 29).
(*e*) 51 & 52 Vict. c. 43.
(*f*) Higher scale, items Nos. 85—94.
(*g*) County Court Rules, Ord. 53, r. 8 (3) (b), added in 1908.
(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 64.

or equitable actions, and actions of ejectment or involving the title to any corporeal or incorporeal hereditament, which are tried in a court more than twenty-five miles from Charing Cross, or where there is no local bar within twenty miles, the judge may, when the costs are taxed under column B or C, allow a further fee, if in his opinion the maximum fee is insufficient (*i*). This fee is only to be allowed once in the same case, although the counsel engaged may have been present in court on more than one occasion (*k*).

Conference.

1423. A fee for conference may be allowed if the fee was marked on the brief when delivered and the registrar is of opinion that it was necessary (*l*).

Refresher.

1424. A refresher where the trial is commenced but not concluded or is adjourned for want of time (including actions fixed for hearing but not reached) (*m*) may be allowed if the judge does not otherwise order (*n*); a similar fee may be allowed when the trial is adjourned on payment of the costs of the day (*o*). A fee may also be allowed with brief on further consideration or argument (*p*).

Fees on judge's order.

1425. The following fees may be allowed if the judge certifies for or orders them:—With brief before an arbitrator, or inquiry or Admiralty reference before the registrar, or where a person interrogated is ordered to be examined *vivâ voce* before the court, or on examination of witnesses before trial, or on the examination of a judgment debtor as to his means of satisfying the judgment (*q*). In the case of remitted actions etc. fees may be allowed for pleadings, interrogatories, preliminary act etc., or other matters required in the course of the action (*r*). Advice on evidence may be allowed by order of the judge (*s*).

Counsel's fee on lower scale.

In the case of actions taxed on the lower scale the judge may by special order to be entered in the minute book allow a fee of £1 3*s*. 6*d*. for the employment of counsel (*t*).

SUB-SECT. 10.—*Witnesses' Allowances.*

Scales and allowances for witnesses.

1426. Allowances are made to witnesses according to a scale set out in Part IV. of the Appendix to the County Court Rules (*u*). There may also be allowed for travelling expenses to all witnesses and to plaintiffs and defendants personally attending the court the sum actually and reasonably paid by them (*a*). If the case is adjourned without being heard or as part heard, they must be paid

(*i*) Higher scale, item No. 86.
(*k*) *Atkinson* v. *Carlisle Corporation*, [1896] 1 Q. B. 393.
(*l*) Higher scale, item No. 87.
(*m*) *Heap* v. *Peart*, [1890] 1 Q. B. 110.
(*n*) Higher scale, item No. 88.
(*o*) *Ibid.*, item No. 89.
(*p*) *Ibid.*, item No. 90.
(*q*) *Ibid.*, item No. 92.
(*r*) *Ibid.*, item No. 93.
(*s*) *Ibid.*, item No. 94.
(*t*) Lower scale, item No. 8.
(*u*) County Court Rules, Ord. 53, r. 37.
(*a*) *Ibid.*, r. 39.

SECT. 5. Particular Cases.

their allowance for travelling expenses and for daily attendance a second time if their attendance is required on the adjourned hearing. If they are kept more than one day their allowance for daily attendance must be paid each day. The allowance for travelling expenses and for the first day's attendance should, it is submitted, be paid to them on service of the subpœna.

Allowance in case of plaintiff witness.

1427. A plaintiff is not entitled to any allowance except for travelling unless he is a domestic or menial servant, a labourer, a servant in husbandry, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, or unless the judge in any particular case otherwise orders (*b*).

Attending more than one action on same day.

1428. If witnesses attend on the same day in more than one action or matter they must be allowed a proportionate part only of their allowances in each action or matter (*c*).

Witnesses not summoned.

1429. The costs of witnesses, whether they have been examined or not, may, unless otherwise ordered, be allowed, though they have not been summoned (*d*). The discretion of the judge must be exercised in each particular case, and he is not authorised to make a general order that the costs of witnesses not examined shall be disallowed, unless otherwise ordered (*e*).

Seamen.

1430. Seamen necessarily detained on shore for the purpose of an action or matter must be allowed such remuneration as the judge orders, or, in the absence of such an order, as the registrar may think reasonable compensation for their loss of time (*f*).

Experts.

1431. In any action or matter in which a party is entitled of right, or by order of the judge, to tax his costs on columns B and C of the higher scale (*g*), the judge may order that any expert or scientific witnesses may be allowed for qualifying to give evidence and for attending the trial (in addition to travelling expenses to attend the trial) such sums as the registrar on taxation may think fit, not exceeding the maximum allowances prescribed (*h*).

Plans, drawings etc.

In like cases the expenses of preparing plans, drawings, models etc. may be allowed (*i*). The persons who prepare such plans, drawings, models etc., if called at the trial only for the purpose of proving their correctness, are only entitled to the allowances of ordinary witnesses. The sum reasonably paid for the preparation

(*b*) County Court Rules, Ord. 53, r. 38. In the former rules the judge's discretion was fettered by the words "for reason of special hardship," but the omission of those words in the present rule gives him a general discretion in the matter.

(*c*) *Ibid.*, r. 40.

(*d*) *Ibid.*, r. 41.

(*e*) *The Cashmere* (1890), 15 P. D. 121.

(*f*) County Court Rules, Ord. 53, r. 42.

(*g*) See p. 581, *ante*.

(*h*) County Court Rules, Ord. 53, r. 43. The allowances are prescribed by a scale in County Court Rules Appendix. Where the costs are taxed on scale B the maximum allowances are £3 3*s*. and £2 2*s*. respectively, and where they are taxed on scale C £5 5*s*. and £3 3*s*. respectively.

(*i*) County Court Rules, Ord. 53, r. 43.

of such plans, drawings, models etc. may be allowed so long as it does not exceed the sums (*k*) set out in the higher scale (*l*). SECT. 5. Particular Cases.

SECT. 6.—*Taxation and Review.*

SUB-SECT. 1.—*Taxation.*

1432. All costs and charges between party and party must be taxed by the registrar of the court in which such costs and charges were incurred. No costs or charges may be allowed on taxation which are not sanctioned by the scale then in force (*m*). All costs and charges between solicitor and client must, on the application of the solicitor or client, but not otherwise, be taxed by the registrar of the court in which such costs and charges were incurred. No costs or charges are allowed either between party and party or solicitor and client which are not sanctioned by the scale applicable (*n*), unless the registrar is satisfied that the client has agreed in writing to pay them, in which case they may be allowed (*o*). Taxation by registrar.

1433. Where under the scales or rules a discretion as to the allowances to be made is vested in registrars, they are required to exercise such discretion with care and discrimination, and strictly in accordance with the particular directions set forth in the scales and rules (*p*). Discretion of registrar.

No costs which are to be paid or borne by another party must be allowed which do not appear to the registrar on taxation to have been necessary or proper for the attainment of justice, or for defending the rights of the party incurring the same, or which appear to the registrar to have been incurred through over-caution, negligence, or mistake, or merely at the desire of such party. Grounds for discretion.

Where a solicitor is employed who does not reside or carry on business in or near the district of the court, no costs for his locomotion or maintenance are to be allowed unless the court is satisfied that there was reasonable cause for employing such solicitor (*q*).

The registrar, in the exercise of his discretion to allow fees and allowances, must take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the action or matter, the amount involved, the interest Discretionary fees and allowances.

(*k*) Higher scale, item No. 95. This item provides for the costs of plans, drawings, models etc., if allowed by the judge, in cases where the costs are taxed under column A of the higher scale.

(*l*) County Court Rules, Ord. 53, r. 44.

(*m*) Except in cases expressly provided for by the rules (County Court Rules, Ord. 53, r. 20).

(*n*) See p. 581, *ante*. As to the taxation of costs in general, see title SOLICITORS.

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 118; County Court Rules, Ord. 53, r. 1. In cases under the extended jurisdiction tried in a foreign court the costs must be taxed by the registrar of such court (County Court Rules, Ord. 22A, r. 26).

(*p*) County Court Rules, Ord. 53, r. 21.

(*q*) *Ibid.*, r. 22.

SECT. 6. Taxation and Review.

of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances (*r*). Thus, in taxing the costs of an administration action it is most reasonable for the registrar to take into account the fact that the estate is insolvent, and on that ground to disallow certain charges, which would be allowed in the case of a solvent estate (*s*).

On taxation between solicitor and client the registrar has no jurisdiction to substitute for an item admittedly not chargeable an item properly chargeable which has been omitted from the bill, but an application to the court must be made to allow the substitution (*t*).

Set-off of costs.

1434. In all cases where a party entitled to receive costs is liable to pay costs to any other party, the registrar may tax the costs which the first party is liable to pay, and may adjust the same by way of deduction or set-off, or may, if he thinks fit, delay the allowance of the costs which such party is entitled to receive, until he has paid or tendered the costs he is liable to pay; or the registrar may allow or certify the costs to be paid and direct payment thereof (*a*).

Time and notice of taxation.

1435. Where practicable the costs of an action or matter should be taxed on the day of trial or hearing. Where the costs are not so taxed, one day's notice of taxation, together with a copy of the bill of costs, if the registrar so directs, must be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor (*b*).

Taxation as between solicitor and client.

1436. An application to tax costs as between solicitor and client must be made in writing to the registrar, and must state on whose behalf it is made. The registrar fixes a time and place for taxation, and must give or send by post to the applicant and to the other party notice of such time and place three clear days at least beforehand (*c*).

Delivery of bill where costs to be paid out of fund.

1437. Where a bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the court may, if it considers that there is reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to the registrar completing the taxation, accompanied by any statement the court may direct, and by a letter informing the client that the bill of costs has been referred to the registrar for taxation, and will be taxed at the time appointed by him, and the court may suspend the taxation for such time as the court may consider reasonable (*d*).

If on the taxation of a bill of costs payable out of a fund or estate (real or personal) one-sixth of the amount of the professional charges

(*r*) County Court Rules, Ord. 53, r. 23.
(*s*) *Pain* v. *Bowden*, [1896] 2 Q. B. 301.
(*t*) *Re Grant, Bulcraig & Co.*, [1906] 1 Ch. 124.
(*a*) County Court Rules, Ord. 53, r. 34.
(*b*) *Ibid.*, r. 2. This notice may be sent by post (*ibid.*, r. 3).
(*c*) *Ibid.*, r. 46.
(*d*) *Ibid.*, r. 36.

is taxed off, no costs must be allowed to the solicitor for drawing or copying the bill, nor for attending the taxation (*e*).

Taxation in High Court of county court costs.

1438. The costs as between solicitor and client in a county court action in which more than £20 is claimed may be taxed in the High Court, and in the case of an administration action in the Chancery Division (*f*).

Taxation of costs of interlocutory application.

1439. The taxation of the costs, where any are allowed, of an interlocutory application must not take place until the general taxation of the costs of the action or matter in which the application is made, or the action or matter is determined, unless the judge or registrar on the hearing of the application for good cause otherwise order (*g*).

SUB-SECT. 2.—*Review of Taxation.*

Review of taxation by registrar.

1440. Any party who is dissatisfied with the allowance or disallowance by the registrar in any bill of costs taxed by him of the whole or any part of any items may, at any time before the certificate or *allocatur* is signed, deliver to the other party interested therein, and carry in before the registrar on taxation, an objection in writing to such allowance or disallowance, specifying therein by a list, the items or parts thereof objected to, and the grounds and reasons for such objection, and may thereupon apply to the registrar to review the taxation in respect of the same (*h*). Thereupon the registrar must reconsider and review his taxation, and may, if he thinks fit, receive further evidence in respect of the objection, and, if so required by either party, shall state either in his certificate of taxation or *allocatur* the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto (*i*).

Review by judge.

1441. If either party is dissatisfied with the decision of the registrar on his review of taxation he may make an application to the judge on notice in writing in accordance with the rules in force relating to interlocutory applications (*k*). Such application must be heard and determined upon the evidence which was brought in before the registrar, and no further evidence shall be received at the hearing thereof unless the judge otherwise orders (*l*). Mandamus does not lie to compel a judge to review taxation (*m*), but an appeal lies from such a refusal (*n*).

(*e*) County Court Rules, Ord. 53, r. 35.
(*f*) *Re Worth* (1881), 18 Ch. D. 521.
(*g*) County Court Rules, Ord. 12, r. 11 (5).
(*h*) County Court Rules, Ord. 53, r. 5. Items which are not included in the objection in writing cannot be dealt with on the review (*Strousberg* v. *Sanders* (1889), 38 W. R. 117, C. A.).
(*i*) County Court Rules, Ord. 53, r. 6.
(*k*) County Court Rules, Ord. 12, r. 11.
(*l*) County Court Rules, Ord. 53, r. 47.
(*m*) *Clifton* v. *Furley* (1862), 31 L. J. (EX.) 170.
(*n*) *Wilson* v. *Statham*, [1891] 2 Q. B. 261.

SECT. 7. Recovery of Costs.

SECT. 7.—*Recovery of Costs.*

Effect of order for costs.

1442. Execution may issue for the recovery of costs which the court has ordered to be paid in like manner as for any debt adjudged in the county court (*o*). Costs awarded to a defendant who appears and denies the claim, where the plaintiff does not appear or fails to prove his case, may be recovered by such ways and means as any debt or damage ordered to be paid by the court can be recovered (*p*). An order to pay costs does not require to be personally served (*a*). No action can be brought on an order to pay costs made by the county court (*b*).

SECT. 8.—*Security for Costs.*

Security by plaintiff.

1443. Where the plaintiff does not reside in England or Wales he cannot have a summons issued until he has given security for costs, by deposit of money or otherwise, to the satisfaction of the registrar. If the plaint, however, is entered through a solicitor, an undertaking by him, in the prescribed form (*c*), to be responsible for the costs is sufficient (*d*). Similar security may be required in the case of a plaintiff who is ordinarily resident out of England and Wales, though he is temporarily resident therein (*e*).

Security where defendant residing at a distance discloses good defence.

A defendant whose residence or place of business is more than twenty miles distant from the court where the plaint is entered, may, not later than five clear days (or in the case of actions where the sum claimed is between £50 and £100, ten clear days) (*f*) before the hearing, forward by registered letter to the registrar an affidavit disclosing a good defence upon the merits of the action; thereupon the registrar, if satisfied that the affidavit discloses such a defence, must by notice call upon the plaintiff to deposit in court within two clear days from the date of the notice such sum as the registrar may, having reference to all the circumstances of the case, direct. If the deposit is not duly made the action must be struck out (*g*).

Costs of security; sureties.

1444. Security when required is given at the costs of the party giving it, and in the form of a bond with sureties to the other party (*h*). Notice of the proposed sureties must be served on the

(*o*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 146; County Court Rules, Ord. 25, r. 1.

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 88, 89.

(*a*) Under County Court Rules, Ord. 23, r. 9; *Re Deakin, Ex parte Cathcart*, [1900] 2 Q. B. 478, C. A. (a decision under R. S. C., Ord. 41, r. 5, which corresponds to the County Court Rules, Ord. 23, r. 9).

(*b*) *Furber* v. *Taylor*, [1900] 2 Q. B. 719, C. A.

(*c*) County Court Rules, Appendix, Form 17. As to security for costs in general, see title PRACTICE AND PROCEDURE.

(*d*) County Court Rules, Ord. 5, r. 10.

(*e*) *Ibid.*, r. 11. The rule is that security will be ordered when a person is in the position of a plaintiff (*Apollinaris Co.* v. *Wilson* (1886), 31 Ch. D. 632, C. A.; *Re Milward & Co.*, [1900] 1 Ch. 405, C. A.).

(*f*) County Court Rules, Ord. 22A, r. 15.

(*g*) County Court Rules, Ord. 12, r. 9. No appeal lies to the judge from the registrar's order under this provision (*Porter* v. *London and Manchester Insurance Co.*, [1909] 2 K. B. 30).

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 108.

registrar and the other party (*i*). The sureties must make an affidavit of their sufficiency in the prescribed form (*k*), unless the other party dispenses with such affidavit (*l*). The bond must be executed in the presence of the judge or registrar or of a commissioner to administer oaths or of a clerk of the registrar nominated to take affidavits (*m*). The registrar has only to inquire into the sufficiency of the sureties, and cannot refuse to receive the bond on the ground that the principal obligee is legally incapable of executing a valid bond (*n*).

Deposit of bond.

1445. The bond must be given to the party or persons requiring the security, and must be deposited with the registrar until the action is finally disposed of (*o*). No officer of the court may be surety on a bond for security for costs (*a*).

Deposit of money in lieu of bond.

1446. Where a party makes a deposit of money in lieu of giving a bond he must forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made (*b*).

Undertaking for costs by next friend.

1447. Where an infant sues by a next friend (*c*) the next friend must give an undertaking in the prescribed form (*d*) to be responsible for costs (*e*).

Part VI.—Appeals.

SECT. 1.—*Appeals.*

SUB-SECT. 1.—*Cases in which an Appeal lies.*

Definition.

1448. The term "appeals" includes every appeal, motion, or application to set aside or vary any verdict or judgment in or of any county court, or for a new trial in an action in the High Court remitted to such county court for trial or otherwise (*f*).

Appeal on point of law.

1449. In any action of contract or tort where the debt or damage claimed exceeds £20 an appeal exists as of right against the decision of a county court judge on any point of law or equity, or upon the admission or rejection of any evidence (*g*). An appeal lies

(*i*) County Court Rules, Ord. 29, r. 1.
(*k*) County Court Rules, Appendix, Form 236.
(*l*) County Court Rules, Ord. 29, r. 2.
(*m*) *Ibid.*, r. 3.
(*n*) *Young* v. *Brompton etc. Waterworks Co.* (1861), 31 L. J. (Q. B.) 14.
(*o*) County Court Rules, Ord. 29, r. 5.
(*a*) *Ibid.*, r. 6.
(*b*) *Ibid.*, r. 4.
(*c*) That is, in actions other than those for wages or piece work or for work as a servant (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 96); see p. 455, *ante*.
(*d*) County Court Rules, Appendix, Form 15.
(*e*) County Court Rules, Ord. 5, r. 16.
(*f*) R. S. C., Ord. 59, r. 18.
(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120. The appeal lies to a Divisional Court except in workmen's compensation cases, when it lies to the

SECT. 1. Appeals.

where the amount of the claim exceeds £20, although judgment be given for a smaller amount (*h*), but does not lie in a case where the judge cannot by law give higher damages than £20 (*i*). The plaintiff cannot at the trial abandon the excess of his claim over £20 so as to deprive the defendant of his right of appeal (*k*). An appeal as of right lies in the case of a counterclaim which exceeds £20, although the claim is less than that amount (*l*).

Replevin, interpleader, recovery of possession.

Similarly an appeal exists as of right on a point of law in actions of replevin (*m*) where the amount of the rent or damage or value of the goods exceeds £20, in interpleader proceedings (*n*) where the money claimed or the value of the goods and chattels, or of the proceeds thereof, exceeds £20, and in actions for the recovery of tenements (*o*) where the yearly rent or value of the premises exceeds £20 (*p*).

Ejectment and actions of title.

An appeal exists as of right on a point of law in actions of ejectment, irrespective of the value or rent of the premises (*q*), in all actions in which the title to any corporeal or incorporeal hereditament comes in question (*r*), in equity actions where the judgment grants an injunction, although less than £20 is claimed in the action (*s*), in actions where the parties agree that the court shall have jurisdiction (*a*), and in remitted actions (*b*).

Interlocutory matters.

An appeal lies in interlocutory matters (*c*), but it is submitted upon the same grounds as to amount and the necessity of obtaining leave to appeal as apply to final judgments or orders.

Court of Appeal (see p. 607, *post*). As to the questions of law which are properly the subject-matter of appeal, see p. 603, *post*.

(*h*) *Dressman* v. *Harris* (1854), 9 Exch. 485.

(*i*) *Mayor* v. *Burgess* (1855), 4 E. & B. 655.

(*k*) *North* v. *Holroyd* (1868), L. R. 3 Exch. 69.

(*l*) *Smith* v. *Gill*, [1896] 2 Q. B. 166.

(*m*) See, generally, title DISTRESS.

(*n*) See, generally, title INTERPLEADER. If there has been an appraisement, the appraised value is the test for the purpose of appeal (*White & Co.* v. *Milne* (1887), 58 L. T. 225); no appeal lies where the appraised value is less than £20, even where more than £20 is claimed as damages (*Lumb* v. *Teal & Co.* (1889), 22 Q. B. D. 675); and the converse principle applies if the value of the goods seized turns out to be more than £20 where the claim was less than that sum (*Vallance* v. *Nash* (1858), 2 H. & N. 712).

(*o*) See p. 436, *ante*. These actions must be distinguished from actions of ejectment, as to which see note (*q*), *infra*.

(*p*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.

(*q*) *Millett* v. *Ballard*, [1904] 2 K. B. 593, C. A.

(*r*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.

(*s*) *Brune* v. *James*, [1898] 1 Q. B. 417.

(*a*) Under County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 64, whereby such an action becomes a county court action for all purposes.

(*b*) *Ibid.*, s. 65, whereby such an action becomes a county court action for all purposes; see also R. S. C., Ord. 59, r. 18.

(*c*) *Gilson & Sons* v. *Kilner* (1893), 69 L. T. 310; see also *Jonas* v. *Long* (1888), 20 Q. B. D. 564. Thus, an appeal lies from an order granting a new trial (*Murtagh* v. *Barry* (1890), 24 Q. B. D. 632; *How* v. *London and North Western Rail. Co.*, [1892] 1 Q. B. 391, C. A.; *Bryant* v. *North Metropolitan Tramways Co.* (1890), 6 T. L. R. 396), or from an order refusing a new trial (*Pole* v. *Bright*, [1892] 1 Q. B. 603; *Dingor* v. *Mathews* (1889), 65 L. T. 748, note), or from an order refusing to order a better answer to interrogatories (*Meek* v. *Witherington* (1892), 67 L. T. 122), or from an order refusing to review a taxation of costs (*Wilson* v. *Statham*, [1891] 2 Q. B. 261).

Appeals under special statutes.

Where a statute has given a special jurisdiction to the county court (*d*) and also a right of appeal by special case, such right still exists (*e*), but is amplified by a right of appeal in the ordinary manner and according to the ordinary conditions of county court appeals (*f*). Similarly, where the statute is silent as to appeal, a right of appeal exists in the ordinary way, unless it can be clearly inferred from the words of the statute that such a right is modified or taken away (*g*).

Where no appeal lies.

1450. No appeal lies from the order of a county court judge imposing a fine for an assault on an officer of the court (*h*), nor in a case where the rules of practice are disregarded and the judge decides the case merely as an arbitrator (*i*). No appeal lies from the decision of the judge if before the decision is pronounced the parties agree in writing, signed by themselves or their solicitors or agents, that his decision shall be final, and such an agreement requires no stamp (*k*).

Appeal on law and not on fact.

1451. Generally speaking an appeal lies on any question of law or of the admission or rejection of evidence which has been raised and decided on the hearing of the action or matter, but not a question of pure fact (*l*). Where there is no jury the findings of fact of the judge are final (*m*), but where it is clear that such findings are dependent on an erroneous view of the law (*n*), or where there is no evidence to support such findings, an appeal lies (*o*). The question of law must be raised and decided at the trial (*p*), and therefore a judgment entered *pro formâ* in order to expedite an appeal is not a determination on a point of law from which an appeal can be brought (*q*). Similarly, objection as to misdirection or non-direction of a jury should be taken at the trial (*r*), but can also be taken on an application for a new trial (*a*).

(*d*) As to these statutes, see generally, pp. 622 *et seq.*, *post*.

(*e*) *Wilkinson* v. *Jagger* (1887), 20 Q. B. D. 423.

(*f*) *Kirkheaton Local Board* v. *Ainley, Sons & Co.*, [1892] 2 Q. B. 274, C. A.

(*g*) *Neptune Steam Navigation Co.* v. *Sclater, The Delano*, [1895] P. 40, C. A.

(*h*) *Lewis* v. *Owen*, [1894] 1 Q. B. 102; and see p. 427, *ante*.

(*i*) *Pearce* v. *Winkworth* (1873), 28 L. T. 710.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 123. For form of such agreement, see County Court Rules, Appendix, Form 14.

(*l*) *Hill* v. *Perssé* (1877), 25 W. R. 275; *Cousins* v. *Lombard Bank* (1876), 1 Ex. D. 404; *Sharrock* v. *London and North Western Rail. Co.* (1875), 1 C. P. D. 70; *Williams* v. *Williams* (1868), 37 L. J. (CH.) 854; *East Anglian Rail. Co.* v. *Lythgoe* (1851), 10 C. B. 726.

(*m*) *Cousins* v. *Lombard Bank*, *supra*.

(*n*) *Cawley* v. *Furnell* (1851), 12 C. B. 291; *Cuthbertson* v. *Parsons* (1852), 12 C. B. 304.

(*o*) *Great Northern Rail. Co.* v. *Rimell* (1856), 18 C. B. 575, also reported *sub nom. Great Western Rail. Co.* v. *Rimell*, 27 L. J. (C. P.) 201; even where the appellant after failing in an application for a nonsuit has called witnesses (*ibid.*); *British Industry Life Assurance Co.* v. *Ward* (1856), 17 C. B. 644.

(*p*) *Clarkson* v. *Musgrave* (1882), 9 Q. B. D. 386; *Smith* v. *Baker & Sons*, [1891] A. C. 325.

(*q*) *Chapman & Sons* v. *Withers & Co.* (1887), 58 L. T. 24.

(*r*) *Clifford* v. *Thames Ironworks and Shipbuilding Co.*, [1898] 1 Q. B. 314.

(*a*) *Handley* v. *London, Edinburgh and Glasgow Assurance Co.*, [1902] 1 K. B. 350.

SECT. 1. Appeals.

Neither the ruling of a judge as to the sufficiency of a stamp on a document (*b*) nor the admission by him of an unstamped document without exacting the necessary penalty are questions of law on which an appeal lies (*c*).

Where prohibition concurrent remedy.

An appeal may lie in a case where there is a remedy by prohibition (*d*), but such a case is not usual on the ground that prohibition lies in cases where the court acts without jurisdiction (*e*).

Order for new trial.

The order of a county court judge granting or refusing a new trial is a determination of law from which an appeal lies (*f*).

Where leave to appeal may be given.

1452. In cases where no appeal exists as of right (*g*), whether from the nature of the case or the amount of the claim involved, the judge may, if he thinks it reasonable and proper that such appeal should be allowed, grant leave to appeal (*h*). The judge, in giving leave, may impose terms, such as that the appellant should pay the respondent's costs in any event, and, if the appeal were unsuccessful, should pay the costs of the trial on the higher scale (*i*). Leave to appeal may be limited to certain points (*k*).

SUB-SECT. 2.—*Procedure leading to Appeal.*

Raising point of law.

1453. The point of law which is the subject of the appeal must be raised at the trial (*l*), and this constitutes a condition precedent to an appeal (*m*).

Request to take note.

At the trial of any action or matter in which there is a right of appeal the judge must, at the request of either party, make a note of any question of law raised at such trial, and of the facts in evidence in relation thereto and of his decision thereon, and of his decision of the action or matter (*n*). A general request to take a note is not sufficient, but if possible a question or questions of law should be specifically raised and a request made to take a note in each case (*o*). The request should be made during or immediately at the end of the trial or hearing (*p*). Such a request is not a condition precedent to the right of appeal (*q*). Where a

(*b*) *Mander* v. *Ridgway*, [1898] 1 Q. B. 501.
(*c*) *Lowe* v. *Dorling* (1905), 74 L. J. (K. B.) 794.
(*d*) *Barker* v. *Palmer* (1881), 8 Q. B. D. 9; *Sweetland* v. *Turkish Cigarette Co.* (1899), 47 W. R. 511.
(*e*) See p. 611, *post*.
(*f*) *Murtagh* v. *Barry* (1890), 24 Q. B. D. 632; and see p. 550, *ante*.
(*g*) See p. 601, *ante*.
(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.
(*i*) *Goodes* v. *Cluff* (1884), 13 Q. B. D. 694.
(*k*) *Jones* v. *Biernstein*, [1900] 1 Q. B. 100, C. A.
(*l*) *Clarkson* v. *Musgrave* (1882), 9 Q. B. D. 386; *Smith* v. *Baker & Sons*, [1891] A. C. 325.
(*m*) *Wohlgemuthe* v. *Coste*, [1899] 1 Q. B. 501.
(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120. The judge may append his own observations thereto (*Clifford* v. *Thames Ironworks and Shipbuilding Co.*, [1898] 1 Q. B. 314).
(*o*) *R.* v. *Kerr* (*Commissioner*) (1894), 70 L. T. 595; see also *Morgan* v. *Rees* (1881), 6 Q. B. D. 508, C. A., at p. 513, where BRAMWELL, L.J., approved the principle, but expressed an opinion that it was not easy to apply in all cases.
(*p*) *Pierpoint* v. *Cartwright* (1880), 5 C. P. D. 139, where a request made an hour and a half after judgment was held too late.
(*q*) *Wohlgemuthe* v. *Coste*, *supra*; *Seymour* v. *Coulson* (1880), 5 Q. B. D. 359,

case is heard with a jury, in the case of misdirection the request can be made during the summing-up, if a direct appeal is contemplated (*r*), but such a course is not necessary, since the point can be taken on a motion for a new trial from the decision on which an appeal lies (*s*).

Copy of note.

Where the note has been taken in accordance with the above-mentioned provisions, the judge must, at the expense of any of the parties to the action or matter, furnish a copy of such note or allow a copy thereof to be taken by such party or parties and must sign the copy whether a notice of motion in the matter of the appeal has been served or not, and the copy so signed must be used and received at the hearing of the appeal (*t*).

Rules governing appeals.

1454. Appeals must be brought in accordance with the Rules of the Supreme Court (*a*).

Notice of motion.

Every county court appeal must be by notice of motion, and no rule *nisi* or order to show cause is necessary. The notice of motion must state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion must be an eight days' notice, and must be served on every party directly affected by the appeal entered (*b*). Every appeal must be entered at the Crown Office Department of the Central Office, and the entry must be made by lodging a copy of the notice (*c*), but this provision does not operate to prevent an appeal from being *in formâ pauperis* (*d*).

Service of notice of motion.

The notice of motion must be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of, such period to be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given (*e*). Service of notice of motion on the London agents of the respondent's solicitor is not sufficient (*f*). Where the finding of a jury is complained of, the twenty-one days are to be calculated from the time when the verdict was given, although

C. A., where the judge had made the necessary note without request, and it was held an appeal would lie.

(*r*) *Clifford* v. *Thames Ironworks and Shipbuilding Co.*, [1898] 1 Q. B. 314.

(*s*) *Handley* v. *London, Edinburgh and Glasgow Assurance Co.*, [1902] 1 K. B. 350.

(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 121.

(*a*) County Court Rules, Ord. 32, r. 1. Special rules deal with appeals in Admiralty; see title ADMIRALTY, Vol. I., pp. 111 *et seq.*

(*b*) R. S. C., Ord. 59, r. 10. The absence of grounds in the notice would, it seems, be excused where caused by the act of the court, as, for instance, where the judge gives judgment on one day and states his grounds of decision on a future day (*Francis* v. *Dowdeswell* (1874), L. R. 9 C. P. 423, *per* BRETT, J., at p. 432).

(*c*) R. S. C., Ord. 59, r. 11.

(*d*) *Clements* v. *London and North Western Rail. Co.*, [1894] 2 Q. B. 482, C. A.

(*e*) R. S. C., Ord. 59, r. 12. As to extension of time, see p. 606, *post*.

(*f*) *Powell* v. *Thomas*, [1891] 1 Q. B. 97; *Jackson* v. *Margrett* (1893), 41 W. R. 267; see also *Malley* v. *Shepley* (1892), 41 W. R. 63, where the same rule was held to apply in the case of a remitted action, in which, after remission, the address of the country solicitor only was indorsed on the particulars. In this case, however, the time for appeal was extended.

SECT. 1. Appeals.

judgment was given subsequently (*g*). It seems, however, that where the judge upon the special finding of the jury directs a verdict for the defendant, but reserves leave for the plaintiff to move for judgment or a new trial, the time must be reckoned, not from the day of trial, but from the day on which the motion is made (*h*). The judge cannot extend the time for appealing by ordering judgment to be entered on a later day than that on which it was delivered (*i*).

Cross-appeal.

Where there is a cross-appeal, it seems that no notice of motion need be served by the respondent since there exists no provision to that effect, but the respondent should give notice of the grounds of his cross-appeal (*k*). A respondent cannot on a cross-appeal raise questions which would not be within the jurisdiction of the court to entertain in the case of an original appeal (*l*).

Stay of proceedings.

1455. The appeal does not operate as a stay of proceedings under the decision appealed from unless the inferior court so orders, or unless within ten days after the decision a deposit is made or security given to the satisfaction of the inferior court for a sum to be fixed by such court, not exceeding the amount of the money or the value of the property affected by the judgment, order, or finding appealed from (*m*).

Extension of time and amendment.

1456. The High Court has power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court thinks just, to ensure the determination on the merits of the real questions in controversy between the parties (*n*). Mistake of law is no ground for extension of time (*o*), but it must be shown that the appellant has been misled by the other side or delayed by unavoidable accident (*p*).

Security for costs.

1457. The High Court can order security for costs of a county court appeal (*q*), but as a rule will not require such security in a case where leave to appeal has been given unconditionally (*r*).

(*g*) *Rawnsley* v. *Lancashire and Yorkshire Rail. Co.* (1887), 35 W. R. 771, where Lord ESHER, LINDLEY and LOPES, L.JJ., sitting as a Divisional Court, announced that they were prepared to affirm their decision in the Court of Appeal, if appealed from.

(*h*) *Foster* v. *Green* (1861), 6 H. & N. 793.

(*i*) *Wilberforce* v. *Sowton* (1878), 48 L. J. (Q. B.) 28.

(*k*) See *Williams* v. *Taperell* (1892), 92 L. T. Jo. 213.

(*l*) *The Alne Holme*, [1893] P. 173.

(*m*) R. S. C., Ord. 59, r. 14.

(*n*) *Ibid.*, r. 16.

(*o*) *R.* v. *Kettle* (*Sir Rupert*) (1886), 17 Q. B. D. 761.

(*p*) *Cusack* v. *London and North Western Rail. Co.*, [1891] 1 Q. B. 347, C. A., where, after a mistake of counsel, the court extended the time on payment of costs. For the general principle, see also *International Financial Society* v. *Moscow* (*City*) *Gas Co.* (1877), 7 Ch. D. 241, C. A.; *Highton* v. *Treherne* (1878), 48 L. J. (Q. B.) 167, C. A.; *McAndrew* v. *Barker* (1878), 7 Ch. D. 701, C. A.; *Re Blyth & Young* (1880), 13 Ch. D. 416, C. A.; *Re New Callao* (1882), 22 Ch. D. 484, C. A. As to remitted actions, see *Malley* v. *Shepley* (1892), 41 W. R. 63; and note (*f*), p. 605, *ante*.

(*q*) See R. S. C., Ord. 59, rr. 17, 18; Ord. 58, r. 15.

(*r*) *Ex parte Apothecaries Society* (1890), 38 W. R. 478.

Mere want of means is not in itself sufficient to justify an order for security if there appear to be reasonable grounds for appealing (*s*), but an insolvent next friend of an infant plaintiff may be ordered to give security (*t*). Security may be ordered in a case where the appellant disposes of his goods in order to avoid payment of the respondent's costs (*a*). From the analogy of the practice of the High Court security may be ordered in applications for new trials as well as in final appeals (*b*).

Provisions in actions under extended jurisdiction.

1458. In cases where a sum exceeding £50 is claimed (*c*), and the action has been transferred to a special court for trial, special provisions apply. Where an appeal is brought in an action sent for trial to a foreign court, a copy of the notice of motion must be lodged by the appellant with the registrar of the foreign court (*d*).

If such copy is lodged before the registrar of the foreign court has after judgment transmitted the documents in the action to the registrar of the home court, the registrar of the foreign court must, unless proceedings are stayed, transmit such copy to the registrar of the home court with the other documents in the action; and if proceedings are stayed, the registrar of the foreign court must retain the documents in the action until the appeal is disposed of (*e*).

If such copy is lodged after the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court, the registrar of the foreign court must forthwith transmit such copy to the registrar of the home court; and if proceedings are stayed, he must give notice of such stay to the registrar of the home court (*f*).

When an appeal has been heard or otherwise disposed of, either party may deposit the judgment of the High Court, or an office copy thereof, or a memorandum signed by the parties and showing how the appeal is disposed of, with the registrar of the foreign court, and thereafter the procedure applicable to cases where a new trial has been heard and disposed of applies (*g*).

SUB-SECT. 3.—*Hearing of Appeals.*

Court hearing appeals.

1459. The appeal from a county court lies to a divisional court of the King's Bench Division (*h*).

(*s*) *Pritchett* v. *Poole* (1897), 76 L. T. 472.

(*t*) *Swain* v. *Follows* (1887), 18 Q. B. D. 585; see also *Shaw* v. *Lutman* (1897), 42 Sol. Jo. 34, where a bankrupt appellant was ordered to give £10 security.

(*a*) *Moore* v. *Pinnick* (1901), 70 L. J. (K. B.) 471.

(*b*) See *Wightwick* v. *Pope*, [1902] 2 K. B. 99, C. A.

(*c*) By virtue of the County Courts Act, 1903 (3 Edw. 7, c. 42).

(*d*) County Court Rules, Ord. 22A, r. 26 b (1). For the meaning of "foreign" court and "home" court, see pp. 468, 472, *ante*.

(*e*) County Court Rules, Ord. 22A, r. 26 b (2).

(*f*) *Ibid.*, r. 26 b (3).

(*g*) *Ibid.*, r. 26 b (4); and see p. 550, *ante*. See also County Court Rules, Ord. 32, rr. 2—4.

(*h*) R. S. C., Ord. 59, r. 4. In workmen's compensation cases it lies to the Court of Appeal; see title MASTER AND SERVANT. The constitution of the divisional court is in the discretion of the Lord Chief Justice (*ibid.*). As to divisional courts generally, see title COURTS.

SECT. 1. Appeals.

Only one counsel on each side is heard on the hearing of the appeal (*i*).

Effect of respondent's death.

The death of a respondent while an appeal is pending does not deprive the appellant of his right to appeal (*k*), and on the death of any party after entry of appeal the High Court can give leave to add as parties the personal representatives of the deceased person (*l*).

Judge's note for court.

1460. It is the duty of the appellant to furnish the court with a copy of the judge's notes (*m*), application for which should be made, not to the High Court, but to the county court judge (*n*). If the latter refuses to furnish a copy he may be ordered by the High Court to do so (*o*).

Non-production of note.

On any motion by way of appeal from a county court, the High Court has the power, if the notes of the county court judge are not produced, to hear and determine the appeal on any other evidence or statement of what occurred before such judge which the court may deem sufficient (*p*). The fact that there is no note must be proved by a certificate of the county court judge to that effect (*q*), and before the admission of other evidence the absence of the note must be satisfactorily explained (*r*). Oral evidence may be taken (*s*). The court will not entertain an objection which was not taken before the county court judge (*t*).

Discretion of High Court.

1461. On any appeal from a county court, the High Court can draw all inferences of fact which might have been drawn in the court below, and can either order a new trial on such terms as the court thinks just, or order judgment to be entered for any party, or make a final or other order to ensure the determination on the merits of the real questions in controversy between the parties (*a*). No appeal may succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless in the opinion of the court substantial wrong or miscarriage has been thereby occasioned in the court below (*b*). The power to enter judgment

(*i*) *Hawes* v. *Peake* (1876), 24 W. R. 407.

(*k*) *Hemming* v. *Williams* (1871), L. R. 6 C. P. 480.

(*l*) *Blakeway* v. *Patteshall*, [1894] 1 Q. B. 247. Where there are no personal representatives service of notice on all the possible parties interested has been held sufficient (*Hemming* v. *Williams*, *supra*).

(*m*) *McGrah* v. *Cartwright* (1889), 23 Q. B. D. 3.

(*n*) *Re Lock, Ex parte Poppleton* (No. 1) (1891), 8 Morr. 44.

(*o*) *R.* v. *Sheffield County Court Judge* (1889), 5 T. L. R. 303.

(*p*) R. S. C., Ord. 59, r. 8.

(*q*) *Brown* v. *Book* (1892), 8 T. L. R. 223; see also *Cook* v. *Gordon* (1892), 61 L. J. (Q. B.) 445.

(*r*) *Lumb* v. *Teal & Co.* (1889), 22 Q. B. D. 675; as, for example, when the point of law arose during the summing-up, and the request to take a note was impossible (*Barber* v. *Burt*, [1894] 2 Q. B. 437); see also *Pierpoint* v. *Cartwright* (1879), 5 C. P. D. 139; *Shaw* v. *Lutman* (1897), 42 Sol. Jo. 34.

(*s*) *The Crescent* (1893), 41 W. R. 533, C. A.

(*t*) *Williams* v. *Evans* (1875), L. R. 19 Eq. 547; *Smith* v. *Baker & Sons*, [1891] A. C. 325; and compare *Rhodes* v. *Liverpool Commercial Investment Co.* (1879), 4 C. P. D. 425.

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 122; R. S. C., Ord. 59, rr. 7, 16.

(*b*) R. S. C., Ord. 59, r. 16.

for either party is applicable whether the case was tried before a judge alone (*c*) or with a jury (*d*).

Leave to appeal from divisional court.

1462. The judgment of the divisional court is final unless special leave to appeal be given by that court (*e*), but in the event of refusal by the divisional court to give leave, application for leave by motion may be made to the Court of Appeal against such refusal (*f*), and the latter rule applies whether the case was one in which there was an appeal as of right from the county court or one in which the county court judge gave leave to appeal (*g*). The Court of Appeal can grant leave to proceed as a pauper to an appellant from the divisional court (*h*). No appeal lies against a refusal to grant leave (*i*). The argument is confined to the point on which leave to appeal has been given (*k*). From the Court of Appeal an appeal lies to the House of Lords (*l*).

Costs of appeal.

1463. The costs of the appeal are within the jurisdiction of the divisional court or Court of Appeal, and as a rule, in the absence of a special order, follow the event of the appeal (*m*).

Where an appeal is dismissed on the ground that no appeal lies, it seems that the court will entertain it so far as to order the appellant to pay the costs (*n*), although it has not always done so (*o*).

A successful appellant may in addition be allowed the costs of the trial in the county court, and a general order allowing the appeal with costs includes such costs (*p*). The power as to costs of the court where the appeal is heard being discretionary, there is no rule to prevent such court from depriving a successful party of the costs of the appeal in a proper case (*q*).

An application for the costs of the appeal should be made at the

(*c*) *Whiteman* v. *Hawkins* (1878), 4 C. P. D. 13; *King* v. *Oxford Co-operative Society* (1884), 51 L. T. 94; and see *Churchward* v. *Johnson* (1890), 54 J. P. 326.

(*d*) *Hamilton* v. *Johnson* (1879), 5 Q. B. D. 263, C. A.

(*e*) Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1 (5).

(*f*) *Ibid.*, s. 1 (6); *Goodman* v. *Moses* (1900), 69 L. J. (Q. B.) 823, C. A. The application should be *ex parte*, and if the Court of Appeal wishes to hear the respondents on the question of leave, it will direct notice to be served (*Dorset County Council* v. *Pethick Brothers* (1898), 14 T. L. R. 183, C. A.).

(*g*) *Moore, Nettlefold & Co.* v. *Singer Manufacturing Co.*, [1904] 1 K. B. 820, C. A.

(*h*) *Clements* v. *London and North Western Rail. Co.*, [1894] 2 Q. B. 482, C. A.

(*i*) *Kay* v. *Briggs* (1889), 22 Q. B. D. 343, C. A.

(*k*) *Jones* v. *Biernstein*, [1900] 1 Q. B. 100, C. A.

(*l*) *Turner* v. *Crush* (1879), 4 App. Cas. 221.

(*m*) *Daniels* v. *Charsley* (1851), 11 C. B. 739; *Robinson* v. *Lawrence* (1851), 7 Exch. 123; *Leach* v. *South Eastern Rail. Co.* (1876), 34 L. T. 134.

(*n*) *Carr* v. *Stringer* (1858), E. B. & E. 123.

(*o*) See *Brown* v. *Shaw* (1876), 1 Ex. D. 425; *Clarke* v. *Roche* (1877), 36 L. T. 78, C. A.

(*p*) *Gage* v. *Collins* (1867), L. R. 2 C. P. 381. A sum paid in as security for costs will be paid out to the successful appellant and an order to that effect included in the order for costs (*Kelly* v. *Webster* (1852), 16 Jur. 838).

(*q*) See *Outhwaite* v. *Hudson* (1852), 7 Exch. 380; *Conybeare* v. *Farries* (1870), L. R. 5 Exch. 16.

SECT. 1. Appeals.

time when the appeal is disposed of, otherwise it will not be entertained (*r*).

Deposit of judgment of appeal court.

1464. When the Court of Appeal has pronounced judgment, either party may deposit the same or an office copy thereof with the registrar of the county court, and thereafter the judgment must be filed and may be enforced as a county court judgment (*s*).

New trial ordered.

Where a new trial is ordered the same must be entered for trial at the first county court held next after twelve clear days from the date of the deposit of the order or office copy, unless the parties agree that it shall be heard sooner or the judge otherwise orders. The new trial must be conducted in the same manner as a new trial granted by the county court itself (*t*).

Entry and effect of judgment of appeal court.

If on the appeal judgment is ordered for either party, such judgment must be entered accordingly, and the successful party can proceed thereon as on a county court judgment (*a*).

SECT. 2.—*Certiorari.*

Remedy of *certiorari.*

1465. The High Court or a judge thereof can by writ of *certiorari* or otherwise remove any action or matter commenced in the county court under the County Courts Act, 1888 (*b*). The remedy of *certiorari* is available when the High Court consider it desirable that the action or matter should be tried in the High Court, and the writ may be granted upon such terms as to costs and security as the High Court may think fit to impose (*c*). *Certiorari* cannot be granted in a case where jurisdiction equal to that of a High Court judge is given by another statute to the county court judge (*d*).

Grounds for *certiorari.*

1466. Usually the grounds for applying for *certiorari* are that difficult questions of law will arise at the trial (*e*), but the mere possibility of such questions arising does not constitute sufficient grounds for applying, and, further, the questions of law must be of general importance and not merely of interest to one of the parties (*f*).

(*r*) *Taylor* v. *Great Northern Rail. Co.* (1866), L. R. 1 C. P. 430.
(*s*) County Court Rules, Ord. 32, r. 2.
(*t*) *Ibid.*, r. 3.
(*a*) *Ibid.*, r. 4.
(*b*) 51 & 52 Vict. c. 43.
(*c*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 126. As to *certiorari* generally in the case of all courts, see title CROWN PRACTICE.
(*d*) *Re New Par Consols* (No. 2), [1898] 1 Q. B. 669, C. A.; *Skinner* v. *Northallerton County Court Judge*, [1899] A. C. 439; although a petition to wind up under the Building Societies Act, 1874 (37 & 38 Vict. c. 42) has been removed (*Re East Dulwich No.* 295 *Starr-Bowkett Building Society* (1890), 39 W. R. 32).
(*e*) *Rees* v. *Williams* (1851), 7 Exch. 51; *Longbottom* v. *Longbottom* (1852), 8 Exch. 203. The High Court has removed an action under the Employers' Liability Act for the above-mentioned reasons (*Potter* v. *Great Western Colliery Co.* (1894), 10 T. L. R. 380, C. A.). As to removal of cases of interpleader and replevin, see titles INTERPLEADER; DISTRESS.
(*f*) *Staples* v. *Accidental Death Insurance Co.* (1861), 10 W. R. 59; *Batt* v. *Price* (1876), 1 Q. B. D. 264; *Re Box* v. *Green* (1854), 9 Exch. 503; *Soloman* v. *London, Chatham and Dover Rail. Co.* (1861), 10 W. R. 59 (writ refused where claim less than £20 in spite of points of law arising). A justice of the peace

The power of the High Court to grant *certiorari* is discretionary (*g*), and, subject to the general principles stated above, extends to all actions in the county court whether brought under its ordinary jurisdiction or under a jurisdiction conferred by some special statute (*h*). Discretion of High Court

1467. The application for *certiorari* is made to a master in chambers, and the provisions as to costs and security follow the Rules of the Supreme Court (*i*). Application for *certiorari*.

The grant of a summons or order to show cause in the case of *certiorari* or prohibition operates as a stay of proceedings in the action, if the High Court or a judge thereof so directs, until the hearing of the order or summons or further order; while the application is pending the county court judge must from time to time adjourn the trial of the action until the determination of the application or the making of the order. A copy of the order or summons or the writ itself must be served by the party obtaining it on the opposite party and on the registrar two clear days before the day of trial of the action, or in the absence of such service, and in the absence of an order of the High Court as to costs, the party obtaining the order must pay all the costs of the day or so much thereof as the judge thinks fit (*k*). Stay of proceedings.

Refusal by the county court judge to obey the writ renders him liable to attachment (*l*). Refusal to obey order.

Where an order for *certiorari* or prohibition or in the nature of mandamus is refused, no other court or judge can grant the same, but there is a right of appeal to the Court of Appeal against the refusal to grant an order, and a second application may be made on different grounds (*m*). Effect of refusal of order.

SECT. 3.—*Prohibition.*

1468. A writ of prohibition issues from the High Court to a county court where the latter acts either without jurisdiction or in excess of its jurisdiction (*n*), and, although the High Court exercises a discretion in determining whether the county court has so acted, When prohibition lies.

objecting to the jurisdiction (see p. 490, *ante*) cannot get the plaint removed by *certiorari* (*Weston* v. *Sneyd* (1857), 1 H. & N. 703). For a full treatment of *certiorari*, see title CROWN PRACTICE.

(*g*) *Banks* v. *Hollingsworth*, [1893] 1 Q. B. 442, C. A.

(*h*) *Re Royal Liver Friendly Society* (1887), 35 Ch. D. 332 (equity action); *Munday* v. *Thames Ironworks Co.* (1883), 10 Q. B. D. 59; *Potter* v. *Great Western Colliery Co.* (1894), 10 T. L. R. 380 (actions under Employers' Liability Act, 1880 (43 & 44 Vict. c. 42)); *R.* v. *East Dulwich No.* 295 *Starr-Bowkett Building Society* (1891), 39 W. R. 32 (petition under Building Societies Act, 1874 (37 & 38 Vict. c. 42)).

(*i*) As to the practice, see, generally, title CROWN PRACTICE.

(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 129, 130. For form of order for costs, see County Court Rules, Appendix, Forms 147, 148. Where the writ was left with a clerk at the registrar's office it was held to be good service (*Brookman* v. *Wenham* (1851), 2 L. M. & P. 233).

(*l*) *Mungean* v. *Wheatley* (1851), 6 Exch. 88.

(*m*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 132; and see title CROWN PRACTICE.

(*n*) See the cases cited in the next note, and, generally, title CROWN PRACTICE.

SECT. 3. Prohibition.

where the case for prohibition is made out the applicant is entitled to a writ as of right (*o*). If the want of jurisdiction is apparent on the face of the proceedings, prohibition lies at any time of the proceedings (*p*).

Effect of order to remit.

An order remitting an action to a county court, although it appears on the face of the order that the same is made without jurisdiction, gives the county court jurisdiction, and no prohibition lies after the trial (*q*).

Questions of law and fact.

Where the want of jurisdiction is not apparent on the face of the proceedings, the county court judge must inquire into the law or facts upon which such jurisdiction depends (*r*). Prohibition lies in a case where such judge assumes jurisdiction on an erroneous view of the law (*s*), but where such jurisdiction depends on his view of the facts the High Court will not on an application for prohibition review his findings except in a very strong case (*t*), more especially where such facts constitute the main issue between the parties (*a*).

(*o*) *Worthington* v. *Jeffries* (1875), L. R. 10 C. P. 379; *London Corporation* v. *Cox* (1867), L. R. 2 H. L. 239; *Wadsworth* v. *Spain* (*Queen*) (1851), 17 Q. B. 171. The writ may be granted in a proper case where the information is laid by a stranger (*ibid.*).

(*p*) *Farquharson* v. *Morgan*, [1894] 1 Q. B. 552, C. A.

(*q*) *Dierken* v. *Philpot*, [1901] 2 K. B. 380.

(*r*) *Brown* v. *Cocking* (1868), L. R. 3 Q. B. 672; and see *Elston* v. *Rose* (1868), L. R. 4 Q. B. 4.

(*s*) *Elston* v. *Rose*, *supra*; and see *Thompson* v. *Ingham* (1850), 14 Q. B. 710; *Crowley* v. *Vitty* (1852), 7 Exch. 319.

(*t*) *Brown* v. *Cocking*, *supra*.

(*a*) *Joseph* v. *Henry* (1850), 19 L. J. (Q. B.) 369. The following are examples of cases where prohibition has been granted:—*Re Aykroyd*, *Grimbley* v. *Aykroyd* (1847), 1 Exch. 479, where a plaintiff split his demand contrary to the provisions of the County Courts Act (see p. 459, *ante*); *Re Hill*, *Hill* v. *Swift* (1855), 10 Exch. 726, where a judge of his own accord, and against the consent of the defendant, amended a claim originally in excess of the jurisdiction to an amount within the jurisdiction; *Re Hopper* v. *Warburton* (1863), 32 L. J. (Q. B.) 104, where a judge had amended the particulars of the plaintiff's claim from a claim for a matter which was outside the jurisdiction of the county court to one which was within its jurisdiction; *R.* v. *Newport* (*Salop*) *County Court Judge* (1887), 36 W. R. 476, where a judge ordered the bailiff of a court in another district to pay compensation for neglecting to levy; *R.* v. *Westmoreland County Court Judge* (1887), 36 W. R. 477, where an action was brought for specific performance of a parol agreement to grant a right of way; *Lawford* v. *Partridge* (1857), 1 H. & N. 621, where a judge ordered payment of costs when he had no jurisdiction to do so; *Howard* v. *Graves* (1885), 52 L. T. 858, where a judge ordered costs on the higher scale without certifying in writing to the effect now required by s. 119 of the County Courts Act, 1888 (51 & 52 Vict. c. 43); *Ex parte M'Fee* (1853), 9 Exch. 261; *Thompson* v. *Ingham* (1850), 14 Q. B. 710, where, in interpleader proceedings, the judge had erroneously held the claimant's particulars to be insufficient, or had held wrongly on the facts that title to land is not in question; *Re Brown* v. *London and North Western Rail. Co.* (1863), 4 B. & S. 326, where a plaint was entered without leave where leave was required; *R.* v. *Lincolnshire County Court Judge* (1887), 20 Q. B. D. 167, where, on an erroneous construction of a will, the judge ordered trustees to pay income to a receiver; *Pearce* v. *Johns* (1897), 41 Sol. Jo. 661, C. A., where a judge wrongly appointed a receiver of moneys, if any, which might become due on a disputed claim under a policy of insurance.

Prohibition lies to prevent a judge from entering judgment for the applicant on an application for a new trial (*Robinson* v. *Fawcett and Firth*, [1901] 2 K. B. 325); from altering or withdrawing a judgment after pronouncement (*Irving* v. *Askew* (1870), L. R. 5 Q. B. 208); from hearing a cause in which he is interested

1469. The High Court, in deciding whether or not to grant a writ of prohibition, is not fettered by the fact that an alternative remedy exists to correct the absence of or excess of jurisdiction (*b*).

Partial prohibition.

1470. Where the particulars in an action disclose two distinct causes of action, of which one only is a matter outside the jurisdiction of the county court, prohibition lies as to that one, leaving the action to continue as to the other in the county court (*c*); but if the action is within the jurisdiction of the county court the mere fact that other matters which are not within the jurisdiction are involved, even though it appears that the judge has in fact considered them, is not sufficient reason for granting a prohibition (*d*).

Where prohibition does not lie.

1471. Where a county court judge acts in a matter within his jurisdiction prohibition does not lie to test the correctness of his decision (*e*).

(*Ex parte Medwin* (1853), 1 E. & B. 609); from proceeding on an order of commitment without jurisdiction (*R.* v. *Brompton County Court Judge* (1886), 18 Q. B. D. 213, C. A., reversed on the facts though approved as regards the law, *sub nom.*, *Stonor* v. *Fowle* (1887), 13 App. Cas. 20); or where another order for the same debt is effective (*Horsnail* v. *Bruce* (1873), L. R. 8 C. P. 378; *Evans* v. *Wills* (1876), 1 C. P. D. 229).

Where an interpleader issue was tried in county court A., and judgment was given for the execution creditor, and on appeal a new trial was ordered, which, by consent, was directed to be in county court B., and on the second trial judgment was given for the claimant, and on an application by the execution creditor to the judge of county court A. that judge made an order granting leave to apply for a new trial, the High Court granted a prohibition prohibiting the judge of court A. from hearing the motion for a new trial (*Cooke* v. *Smith* (1896), 12 T. L. R. 629, C. A.).

(*b*) *Sweetland* v. *Turkish Cigarette Co.* (1899), 47 W. R. 511 (appeal equally available); *Channel Coaling Co.* v. *Ross*, [1907] 1 K. B. 145 (remedy under county court rules available).

(*c*) *Re Walsh* (1853), 1 E. & B. 383; *R.* v. *Westmorland County Court Judge* (1887), 36 W. R. 477. Where, however, an action was brought in the county court of Gloucestershire to recover £20 offered as a reward for the apprehension and conviction of a felon, and it appeared that the felon was apprehended in Gloucestershire but convicted in Herefordshire, a prohibition was awarded, because to give the county court jurisdiction the whole of the cause of action must (at that time) have arisen within its district, and here the conviction, which was part of the cause of action, took place out of the district (*Hernaman* v. *Smith* (1855), 10 Exch. 659).

(*d*) *Chivers* v. *Savage* (1855), 5 E. & B. 697.

(*e*) *Winsor* v. *Dunford* (1848), 12 Q. B. 603. In these circumstances prohibition does not lie where the judge has granted a new trial on the ground of misconduct of the jury in the absence of proper evidence to that effect (*R.* v. *Greenwich County Court Judge* (1888), 37 W. R. 132); where the judge has decided a question of service and given judgment in the defendant's absence (*Re Lenaghan, Robinson* v. *Lenaghan* (1848), 2 Exch. 333); where the judge misconstrued a statute (*Re Tamerlane* v. *Bowen* (1851), 15 Jur. 1196); where the judge overruled an objection by the defendant as to the election in which capacity the defendant should be sued (*Lexden Guardians* v. *Southgate* (1854), 10 Exch. 201); where the judge allowed the issue of a new summons which would be statute-barred (*Foster* v. *Temple* (1848), 17 L. J. (Q. B.) 230); where the defendant gave notice of a counterclaim not within the jurisdiction of the county court (*Davis* v. *Flagstaff Mining Co.* (1878), 3 C. P. D. 228). Where the judge gave judgment for the plaintiff on the admitted plea of *res judicata* by the defendant (*Toft* v. *Rayner* (1847), 5 C. B. 162); where the judge made a committal on a judgment summons in face of the defence of a discharge in bankruptcy (*Still* v. *Booth* (1850), 1 L. M. & P. 446).

SECT. 3. Prohibition.

1472. The right to prohibition may in certain circumstances be lost by waiver, such waiver arising from the conduct of the party applying (*f*).

Application when and how made.

1473. Application for prohibition may be made either before, during, or after the proceedings where the objection to the jurisdiction is apparent on the face of the proceedings, but otherwise it cannot be made until the ground for applying has been raised in the county court (*g*).

The application is made to a judge of the High Court, and in accordance with the provisions of the Crown Office Rules (*h*).

Effect of order.

On an application for prohibition the matter is finally disposed of by order, and no declaration or further proceedings are allowed; the county court judge does not appear on the proceeding, except by order of the High Court judge, and the matter is dealt with as if it were an ordinary appeal from the county court (*i*).

Stay of execution.

The same provisions as to stay of execution, as to costs of the writ not sent to the registrar, and as to appeal apply as in the case of *certiorari* (*k*).

SECT. 4.—*Mandamus.*

Application for order.

1474. An order in the nature of a mandamus may be obtained from the High Court calling on a judge or officer of the county court, who has refused to do any act relating to the duties of his office, to show cause why such act should not be done. The party affected by such refusal applies for the order on affidavit, and if good cause be not shown the order is directed against such judge or officer, who must obey the same on pain of attachment, the High Court having a discretion as to the costs of the order (*l*).

Discretion of High Court.

The granting or refusing of such an order is in the discretion of the High Court (*m*), and the latter will refuse an order where no question of law can arise thereon (*n*), or where the effect of the order will be substantially to give the applicant an alternative remedy of appealing (*o*) or where prohibition is available (*p*).

Grounds for order.

1475. Generally speaking an order lies in all cases where the judge or officer has improperly refused or declined to perform his ordinary duty under the County Court Acts (*q*), but not where he

(*f*) See *Winsor* v. *Dunford* (1848), 12 Q. B. 603; *Broad* v. *Perkins* (1888), 21 Q. B. D. 533, C. A.; *Re Jones* v. *James* (1850), 19 L. J. (Q. B.) 257; *Moore* v. *Gamgee* (1890), 25 Q. B. D. 244; and title CROWN PRACTICE.

(*g*) See *London Corporation* v. *Cox* (1867), L. R. 2 H. L. 239; and title CROWN PRACTICE.

(*h*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 127.

(*i*) *Ibid.*, s. 128.

(*k*) See notes (*k*) and (*m*), p. 611, *ante*.

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 131.

(*m*) *Sharrock* v. *London and North Western Rail. Co.* (1875), 1 C. P. D. 70; and see title CROWN PRACTICE.

(*n*) *Sharrock* v. *London and North Western Rail. Co.*, *supra*.

(*o*) *Brown* v. *Taylor* (1868), 18 L. T. 657; *Rhodes* v. *Liverpool Commercial Investment Co.* (1879), 4 C. P. D. 425.

(*p*) *Brown* v. *London and North Western Rail. Co.* (1863), 32 L. J. (Q. B.) 318.

(*q*) In the following cases an order was issued:—Where a judge, wrongly

has erroneously performed such duty (*r*), or where the refusal has regard to a matter clearly within his discretion (*s*); nor will an order lie against a judge for refusing to hear a case over which he has no jurisdiction (*t*). No order lies unless there has been a demand and a direct refusal to do the act required (*a*).

Mandamus under special statute.

Where a duty is imposed on a county court judge under a special Act the proper remedy is mandamus, and not an order in the nature of mandamus under the foregoing provisions (*b*).

1476. The application is made to the divisional court, or in cases of urgency in vacation to a judge in chambers in accordance with the provisions of the Crown Office Rules (*c*).

Part VII.—General Powers and Regulations.

SECT. 1.—*Contempt in Open Court.*

Contempt in face of court.

1477. If any person wilfully insults the judge, or any juror or witness, or any registrar, bailiff, or officer of the court for the time being during his sitting or attendance in court, or in going to or returning from the court, or wilfully interrupts the proceedings of

holding the particulars insufficient as a preliminary objection, refused to try a case (*R.* v. *Richards* (1851), 20 L. J. (Q. B.) 351; *R.* v. *Stapylton* (1851), 21 L. J. (Q. B.) 8; *Churchward* v. *Coleman* (1866), L. R. 2 Q. B. 18), or took the same course wrongly holding that personal service of a summons was necessary (*Davis* v. *Pearce* (1870), L. R. 5 C. P. 435), or wrongly holding that he had no jurisdiction (*R.* v. *Southampton County Court Judge* (1891), 65 L. T. 320); where the judge wrongfully refused to hear a case remitted from the High Court (*Blades* v. *Lawrence* (1874), L. R. 9 Q. B. 374), or refused on a new trial to try the case with a jury (*R.* v. *Harwood* (1853), 22 L. J. (Q. B.) 127), or refused to receive a verdict of the jury (*Jardine* v. *Smith* (1860), 8 W. R. 464), or refused to entertain a case on the ground that there was a concurrent but not an exclusive remedy in another court under a particular statute (*R.* v. *Philbrick*, *Ex parte Edwards*, [1905] 2 K. B. 108). Similarly, an order lies against a registrar for refusing to issue a summons under the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67) (*R.* v. *Southampton County Court Registrar* (1892), 61 L. J. (Q. B.) 706), or for refusing to issue execution (*R.* v. *Fletcher* (1852), 2 E. & B. 279). An order to proceed was also made in a case where the parties having agreed to leave the matter to the judge as an arbitrator the defendant subsequently withdrew his consent and so prevented the judge from giving a decision (*Norburn* v. *Hilliam* (1870), L. R. 5 C. P. 129).

(*r*) *R.* v. *Richards* (1851), 20 L. J. (Q. B.) 351, 352; *Re Corbett* (1859), 4 H. & N. 452; and see *Fortescue* v. *Paton* (1860), 3 L. T. 268; *Kershaw* v. *Chantler* (1872), 26 L. T. 474.

(*s*) *Clifton* v *Furley* (1862), 7 H. & N. 783 (refusal of review of taxation); *R.* v. *Dewsbury County Court Judge* (1889), 88 L. T. Jo. 44 (refusal to restore parties).

(*t*) *Brown* v. *London and North Western Rail. Co.* (1863), 32 L. J. (Q. B.) 318.

(*a*) See, generally, title CROWN PRACTICE; and *Furber* v. *Sturmey* (1858), 3 H. & N. 521; *R.* v. *Pontypool County Court Judge* (1894), 63 L. J. (Q. B.) 702.

(*b*) *Re Brighton Sewers Act* (1882), 9 Q. B. D. 723.

(*c*) As to procedure and appeals in mandamus generally, see title CROWN PRACTICE.

SECT. 1. Contempt in Open Court.

the court, or otherwise misbehaves in court, any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, may take such offender into custody, and detain him until the rising of the court; and the judge may, if he thinks fit, by a warrant under his hand, and sealed with the seal of the court, commit any such offender to any prison to which he has power to commit offenders for any time not exceeding seven days, or impose upon any such offender a fine not exceeding £5 for every such offence, and in default of payment thereof commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid (*d*).

Prisons for committals.

The prisons for committals under this provision are determined by orders of the Home Secretary (*e*).

Other cases of contempt.

The jurisdiction to commit under this provision is confined to the particular cases therein mentioned, and does not apply to a contempt committed out of court (*f*).

Evidence of contempt.

The judge must decide on the evidence whether there has been a contempt under these provisions, and the High Court, in reviewing his decision, can only consider whether there was such evidence and whether the form of the warrant is correct (*g*).

Form of warrant.

The warrant should specify broadly the particulars of the contempt (*h*), but where the judge has been wilfully insulted need not state the nature of the insults (*i*). If the order inflict a fine, the fine must be paid into court and application made to the judge for the release of the prisoner (*k*).

The order and warrant under these provisions must be in the prescribed form and where a fine is imposed may be enforced as a judgment debt or as a sum adjudged to be paid under the Summary Jurisdiction Acts (*l*).

Perjury.

1478. A judge or deputy judge of a county court, in case it appears to him that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit or other proceeding made or taken before him, can direct such person to be prosecuted for perjury, and commit him until the next assizes for the county or other district within which the perjury was committed, unless he enters into a recognisance, with sureties, to

(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 162. As to the jurisdiction to commit for disobedience of an order, see p. 433, *ante*; and title CONTEMPT AND ATTACHMENT, Vol. VII., pp. 297 *et seq.*

(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 163. For a list of such orders and prisons, see Yearly County Court Practice, 1909, Vol. I., p. 1157.

(*f*) *R.* v. *Lefroy* (1873), L. R. 8 Q. B. 134. The judge has no power under this provision to commit an unqualified person who has acted as a solicitor in the county court (*R.* v. *Brompton County Court Judge*, [1893] 2 Q. B. 195).

(*g*) *R.* v. *Jordan* (1887), 36 W. R. 797.

(*h*) *R.* v. *Lambeth County Court Judge* (1887), 36 W. R. 475.

(*i*) *Levy* v. *Moylan* (1850), 10 C. B. 189; *Ex parte Pater* (1864), 5 B. & S. 299.

(*k*) *R.* v. *Staffordshire County Court Judge* (1888), 57 L. J. (Q. B.) 483, C. A.

(*l*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 167; County Court Rules, Ord. 52, r. 8; and see County Court Rules, Appendix, Forms 365—367. See also Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 18—22, 28; Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 5, 21; and title MAGISTRATES.

surrender and take his trial, and can require any person to enter into recognisances to attend such trial and give evidence against the person so directed to be prosecuted (*m*).

SECT. 2.—*Rules and Forms.*

The rule committee.

1479. Five county court judges are appointed by the Lord Chancellor as a rule committee, with power in him to fill up any vacancies in their number, to frame rules and orders for regulating the practice of the county courts and the scales of costs, and to make amendments thereof. Such rules and orders and amendments thereof certified under the hands of such judges, or any three of them, are, after submission to the Lord Chancellor, who may, subject to the concurrence of the authority for making the rules of the Supreme Court, allow or disallow or alter the same, in force in every county court, and can be made with regard to any matter within the cognisance of the county courts according to the principles on which the Rules of the Supreme Court are framed. In any case not expressly provided for by the County Court Acts and rules the general principles of practice in the High Court apply (*n*).

Validity of rules.

1480. The rules must not be inconsistent with the County Court Act, and if they are inconsistent do not override the same (*o*). No practice may prevail in the county court inconsistent with the rules, nor may any matter be added to the prescribed forms whereby any obligation is imposed on any suitor or officer of the court to which he is not liable either by statute, rules, or law (*p*).

Effect of irregularity.

Non-compliance with any rule of practice does not render proceedings void, unless the court so directs, but proceedings under such circumstances may be set aside as irregular, or amended or otherwise dealt with upon terms (*q*). An application to set aside proceedings for irregularity must be made within a reasonable time, and according to the provisions governing interlocutory applications; the party applying must not have taken a fresh step in the action after knowledge of the irregularity (*r*).

(*m*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 19. As to the sufficiency of the indictment in such a case, see *Lavey* v. *R.* (1852), 21 L. J. (M. C.) 10, Ex. Ch.; *R.* v. *Hankins* (1849), 2 Car. & Kir. 824. As to prosecutions by order of a judge generally, see title CRIMINAL LAW AND PROCEDURE.

(*n*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 164. By s. 7 of the County Courts Act, 1903 (3 Edw. 7, c. 42), the power to make rules in accordance with these provisions was extended to making rules to carry that Act into effect. As to the concurrence of the High Court Rule Committee, see Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 24; and as to the making of rules in the High Court, see title PRACTICE AND PROCEDURE. See also Rules Publication Act, 1893 (56 & 57 Vict. c. 66).

(*o*) *Irving* v. *Askew* (1870), L. R. 5 Q. B. 208; and see *R.* v. *Liverpool Corporation* (1887), 18 Q. B. D. 510; *Poyser* v. *Minors* (1881), 7 Q. B. D. 329, C. A.; *Wetherfield* v. *Nelson* (1869), L. R. 4 C. P. 571; *Carter* v. *Smith* (1855), 4 E. & B. 696; *Hacking* v. *Lee* (1860), 2 E. & E. 906.

(*p*) County Court Rules, Ord. 54, r. 23. A judge cannot make a special rule as to disallowing solicitors' costs in certain cases (*R.* v. *Marylebone County Court Judge* (1890), 34 Sol. Jo. 459).

(*q*) County Court Rules, Ord. 54, r. 24.

(*r*) *Ibid.*, r. 25.

SECT. 2. Rules and Forms.

Prescribed forms.

1481. All proceedings and documents must be in the forms similar to those prescribed where the same are applicable, and where not applicable, or where none are provided, should be framed on the model of the prescribed forms (*s*). An objection owing to neglect to use the prescribed form should be taken on the earliest possible occasion, and such neglect is a mere irregularity which will not be entertained on appeal (*t*).

SECT. 3.—*Fees.*

Orders as to fees.

1482. The Treasury from time to time, with the concurrence of the Lord Chancellor, may make orders as to the fees to be paid on any proceedings which are authorised to be taken in the county courts, whether any fee is now payable thereon or not; every such order must be notified to both Houses of Parliament within ten days from the commencement of the session next after the making thereof (*a*).

The Treasury Order now in force in the county courts is dated December 30, 1903. The order is divided into two schedules, A and B. Generally speaking the fees included in Schedule A must be accounted for and paid over to the Treasury, and those in Schedule B are retained by the registrars and high bailiffs for their own use. A registrar who is wholly paid by salary (*b*) has to account and pay over to the Treasury all fees paid under both schedules (*c*).

Payment of fees.

1483. The fees payable must, except in interpleaders, or where such fees are payable in respect of keeping possession, appraising or selling goods seized, be paid in the first instance by the party on whose behalf any such proceeding is to be taken before such proceeding is taken; and in default of the payment of any fees payment thereof must, by order of the judge, be enforced in like manner as payment of any debt adjudged by the court to be paid (*d*). It seems that an action lies at common law to recover fees unpaid and properly payable (*e*).

Table of fees.

A table of all fees must be posted in some conspicuous place in every court-house and registrar's office (*f*).

(*s*) County Court Rules, Ord. 54, r. 22. For the forms prescribed, see County Court Rules, Appendix, Forms.

(*t*) *Sargent* v. *Wedlake* (1851), 11 C. B. 732.

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 165.

(*b*) See p. 420, *ante*.

(*c*) For the order and schedules, see Yearly County Court Practice, 1909, Vol. I., p. 932. Small amendments introduced by subsequent orders are there noted.

(*d*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 166. As to the accounting for fees by the registrar, see p. 418, *ante*.

(*e*) *Batt* v. *Price* (1876), 1 Q. B. D. 264, *per* LUSH, J., at p. 269. In that case there was a tacit understanding between the registrar and the defendant, a solicitor, that the fee should be paid, the registrar not usually insisting on prepayment where he could rely on the solicitor.

(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 166. For fees in interpleader proceedings, see title INTERPLEADER. As to fees on possession or appraising or selling goods, see pp. 559, 565, *ante*.

SECT. 4.—*Service, Time, Notices and Seal.*

SECT. 4. Service, Time, Notices and Seal.

1484. Any notice, proceeding, or document required to be served on any party, and as to which no mode of service is specially prescribed, may be so served by delivering the same to the person on whom it is to be served, or by delivering the same at the residence or place of business of such person, or by sending the same by post addressed to such person at his last-known residence or place of business; and any such notice, proceeding, or document, if served by post, is, unless the contrary be proved, deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice, proceeding, or document it is sufficient to prove that the same was properly addressed and posted (*g*).

Service generally.

1485. Where a party acts by a solicitor, any document, notice, or proceeding required to be served by or upon such party may be served by or upon such solicitor, except in cases where personal service upon a party is specially required; and service of any such document, notice, or proceeding upon such solicitor, or delivery of the same at his office, or sending the same to him by post prepaid, is deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered. This provision does not apply to a default or judgment summons, and only applies to any ordinary summons where the solicitor represents to the bailiff that he can accept service and indorses on the summons a memorandum to that effect (*h*).

Service where solicitor employed.

A solicitor may give notice in writing to the registrar and to the other party that he is acting for a party, and thereafter service upon him of any document, notice, or proceeding which may be served on him is good until notice of change of solicitor; no special notice is necessary when the solicitor signs the particulars of claim or the notice of defence (*i*).

Notice by solicitor of employment.

A change of solicitor may be made without leave on forty-eight hours' notice to the registrar and the other party, and such notice must be filed; but this provision is subject to the provisions forbidding a solicitor to a party retaining another solicitor as an advocate (*k*).

Change of solicitor.

Where a solicitor undertakes the service of any process he must make the necessary copies thereof, which are sealed by the registrar and returned to such solicitor (*l*).

Copies of process to be served by solicitor.

1486. Documents to be filed for service must be filed with the registrar with as many copies as there are parties, and if required a copy for the use of the judge (*m*).

Copies of documents.

(*g*) County Court Rules, Ord. 54, r. 2. For the purposes of these provisions a place of business is not deemed to be the place of business of the person to be served unless he is the master or one of the masters thereof (*ibid.*).

(*h*) *Ibid.*, r. 3; and see County Court Rules, Ord. 7, r. 12. As to where personal service is necessary, see pp. 469 *et seq.*, *ante*.

(*i*) County Court Rules, Ord. 54, r. 4.

(*k*) *Ibid.*, r. 6; and see p. 525, *ante*.

(*l*) County Court Rules, Ord. 54, r. 5.

(*m*) *Ibid.*, r. 13.

SECT. 4. Service, Time, Notices and Seal.

Service of process must not be effected by a person under the age of sixteen years, and an affidavit of service must state that the person serving the process is over that age (*n*).

Advertisements.

1487. Necessary advertisements are ordered by the court, and the expense thereof must be paid to the registrar by the party requiring the same (*o*). Advertisements in the *London Gazette* must be transmitted where necessary by the registrar to the registrar of county court judgments in London (*p*).

Enlargement or abridgment of time.

1488. Parties may by consent enlarge or abridge any of the times fixed by general provisions for taking any step or filing any document, or giving any notice, in any action or matter. Where such consent cannot be obtained, either party may apply to the court, on notice to the non-consenting party, for an order to effect the object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed, and on such terms, as to costs and otherwise, as the court may direct (*q*).

Computation of time; Sundays and holidays.

1489. Where any thing is required under county court procedure to be done within a period not exceeding forty-eight hours, no part of any Sunday or day on which the offices of the court need not be open under these rules or under any order of the Lord Chancellor can be included in the computation of such period (*r*).

Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices of the court are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding, so far as regards the time of doing or taking the same, is held to be duly done or taken if done or taken on the day on which the offices shall next be open (*s*).

No service on holidays.

No summons, warrant, or other process (except a summons *in rem* or a warrant of arrest in an Admiralty action) may be served or executed on Sunday, Christmas Day, Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving; nor need any summons, warrant, or other process be served or granted on any day on which the offices of the courts need not be open under provisions to that effect (*t*), or under any order of the Lord Chancellor; but such days must be counted in the computation of time required by these rules in respect of service (*a*).

(*n*) County Court Rules, Ord. 54, r. 5A.
(*o*) *Ibid.*, r. 9.
(*p*) *Ibid.*, r. 10.
(*q*) *Ibid.*, r. 12. The time fixed for signing judgment on a default summons in default of appearance cannot be extended under this rule; see County Court Rules, Ord. 7, r. 36; and p. 465, *ante*.
(*r*) County Court Rules, Ord. 54, r. 17.
(*s*) *Ibid.*, r. 18.
(*t*) See p. 413, *ante*.
(*a*) County Court Rules, Ord. 54, r. 19.

SECT. 4. Service, Time, Notices and Seal.

1490. All notices must be in writing unless expressly authorised by the court to be given orally (*b*), and must, where a prescribed form is provided, substantially comply with that form (*c*).

All letters, notices, documents, or process sent by post by or to the officers of the court or by or to parties must be prepaid and not sent by book post (*d*), and all notices sent by post to the registrar's office are taken to have been delivered on the proper day if they are delivered at such office before the opening thereof on the following day (*e*).

Posting of notices.

1491. For every county court there is a seal of the court, and all summonses and other process issuing out of the said court must be sealed or stamped with the seal of the court, and all such summonses and other process purporting to be so sealed must in England be received in evidence without further proof thereof. Every person who forges the seal or any process of the court, or who serves or enforces any such forged process knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court knowing the same to be false, or who acts or professes to act under any false colour or pretence of the process or authority of the said court, is guilty of felony (*f*).

Seal of county court.

All summonses, notices, or other documents or copies thereof must before issue be sealed by the registrar (*g*).

Documents to be sealed.

In the event of any warrant, order, or other document issued by the court being lost or destroyed, a duplicate thereof may be issued from time to time upon proof, by affidavit or otherwise, to the satisfaction of the registrar, of such loss or destruction (*h*).

Loss of document.

SECT. 5.—*Construction.*

1492. In every Act or Order in Council passed or made after 1846 the expression "county court," unless the contrary intention appears, means as regards England and Wales a court under the County Courts Act, 1888 (*i*). Any reference in any of the Judicature Acts and the Statute Law Revision and Civil Procedure Act, 1883 (*j*), to an inferior court includes a county court (*k*). The County Courts Acts, 1888 and 1903, must be construed as one Act (*l*).

Meaning of "county court."

The general rules of interpretation of words are in force in the county courts, and special provisions are made for the interpretation of particular words used in the County Courts Acts and Rules; words in the rules bear the same meaning as in the County Courts Acts (*m*).

Interpretation of words.

(*b*) County Court Rules, Ord. 54, r. 15.
(*c*) *Ibid.*, r. 16.
(*d*) *Ibid.*, r. 20.
(*e*) *Ibid.*, r. 21.
(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 180.
(*g*) County Court Rules, Ord. 54, r. 14.
(*h*) *Ibid.*, r. 26.
(*i*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 6.
(*j*) 46 & 47 Vict. c. 49.
(*k*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 187.
(*l*) County Courts Act, 1903 (3 Edw. 7, c. 42), s. 8.
(*m*) See Interpretation Act, 1889 (52 & 53 Vict. c. 63); County Courts Act,

SECT. 1. Introductory.

Part VIII.—Jurisdiction under Special Statutes.

SECT. 1.—*Introductory.*

SUB-SECT. 1.—*Special Powers of Judges and Registrars.*

Special powers.

1493. In addition to the special jurisdiction which is conferred on the county court under the statutes which are dealt with in the succeeding sections of this article various powers have been conferred and duties imposed on the judge and registrar of the county court which, whilst not strictly matters of jurisdiction, require mention.

Coal Mines Regulation Act, 1887.

Thus, under the Coal Mines Regulation Act, 1887 (*n*), a judge of county courts is one of the persons who may be appointed by the Secretary of State, either alone or with others, to hold an inquiry into the competency or misconduct of a certificated manager or under-manager of a mine (*o*), and such judge is also, as is the registrar of a county court, one of the persons who may act as an arbitrator in arbitrations under the Act (*p*).

Customs Laws Consolidation Act, 1876.

Under the Customs Consolidation Act, 1876 (*q*), various jurisdictions are conferred on justices, and the term "justice" as used therein is defined as meaning and including, amongst other persons, a county court judge (*r*).

Explosives Act, 1875.

Under the Explosives Act, 1875 (*s*), a judge of county courts is one of the persons who, with others, may be appointed to hold an investigation, directed by the Secretary of State, into the cause of any accident due to a fire or explosion in connection with any explosive or of which notice is required to be given under the Act (*t*).

Regulation of Railways Act, 1871

Under the Regulation of Railways Act, 1871 (*a*), a county court judge is one of the persons who may be directed by the Board of Trade to hold an inquiry into the circumstances of any accident of which notice is required to be sent to the Board of Trade (*b*).

Bills of Sale Act, 1882.

1494. Under the Bills of Sale Act (1878) Amendment Act, 1882 (*c*), where the affidavit which is required to accompany a bill of sale when presented for registration (*d*) describes the residence of

1888 (51 & 52 Vict. c. 43), s. 186; and County Court Rules, Ord. 55. As to the construction of statutes and orders generally, see title STATUTES.

(*n*) 50 & 51 Vict. c. 58; see, generally, title MINES, MINERALS AND QUARRIES.

(*o*) *Ibid.*, s. 27.

(*p*) *Ibid.*, s. 47 (18).

(*q*) 39 & 40 Vict. c. 36; see, generally, title REVENUE.

(*r*) *Ibid.*, s. 284.

(*s*) 38 Vict. c. 17; see, generally, title EXPLOSIVES.

(*t*) *Ibid.*, s. 66.

(*a*) 34 & 35 Vict. c. 78; see, generally, title RAILWAYS AND CANALS.

(*b*) *Ibid.*, s. 7 (1).

(*c*) 45 & 46 Vict. c. 43; as to bills of sale generally, see title BILLS OF SALE, Vol. III., pp. 1 *et seq.*

(*d*) Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10; see title BILLS OF SALE, Vol. III., pp. 51 *et seq.*

the person making or giving the same, or against whom the process is issued, to be in some place outside the London bankruptcy district (*e*) the registrar (*f*) must, within three clear days after registration, transmit an abstract of the contents of such bill of sale to the registrar of the county court in whose district such places are situate (*g*), and the registrar of such court must forthwith file such abstract, and thereupon any person may search, inspect, make abstracts from, and obtain copies of the abstract so registered, as in the case of bills of sale registered under the principal Act (*h*).

The forms to be used and the procedure to be followed are prescribed by the Rules of the Supreme Court (*i*). No special regulations have been made in the county court, and the above-mentioned Rules of the Supreme Court apply to searches etc. made in the county court (*k*).

Deeds of Arrangement Act, 1887.

1495. Under the Deeds of Arrangement Act, 1887 (*l*), provision is made whereby upon the registration under the Act of a deed of arrangement in which the place of business or residence of the debtor is situate outside the London bankruptcy district (*m*) a copy of such deed must be transmitted to the registrar of the county court of the district within which the address of such debtor is situate (*n*), so that the same may be filed in such county court and inspection had thereof as in the case of deeds filed in the central registry (*o*).

The procedure as to filing and searches is governed by the rules made under the Act, as also are the fees payable on searching and taking copies (*p*).

Intestates Acts, 1873 and 1875.

1496. The Intestates Act, 1873 (*q*), provides that in cases where the estate of a deceased intestate does not exceed £100 the widow and children, if they reside more than three miles from the registry of the Court of Probate having jurisdiction in the matter, may obtain grant of letters of administration through the registrar of

(*e*) For the definition of "London bankruptcy district," see Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 96; and title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 7.

(*f*) That is, the registrar under the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31).

(*g*) Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 11.

(*h*) *Ibid.*, s. 11.

(*i*) *Ibid.*; and see R. S. C., Ord. 61, rr. 25 *et seq.*; and Yearly Practice of the Supreme Court, 1909, pp. 902 *et seq.*

(*k*) Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 11.

(*l*) 50 & 51 Vict. c. 57; see, generally, title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 329 *et seq.*

(*m*) That is, the London bankruptcy district as defined by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 96; see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 6.

(*n*) Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), s. 13 (1).

(*o*) *Ibid.*, s. 13 (2).

(*p*) See the Deeds of Arrangement Act Rules, 1888; and title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 331.

(*q*) 36 & 37 Vict. c. 52. As to administration generally, see title EXECUTORS AND ADMINISTRATORS.

SECT. 1. Introductory.

the county court of the district in which the deceased had his fixed abode at the time of his death (*r*).

The Intestates Act, 1875 (*s*), extends the provisions of the first-named Act to the children of a widow dying intestate (*t*).

Corrupt and Illegal Practices Prevention Act, 1883.

1497. The Corrupt and Illegal Practices Prevention Act, 1883 (*a*), provides that claims in respect of expenses incurred at parliamentary elections must be sent in within fourteen days after the day on which the election of the candidate is declared, and that such claims, except as in the Act permitted, must be paid within twenty-eight days after such day (*b*).

Where an election agent disputes a claim duly sent in, or fails or refuses to pay it within the said period of twenty-eight days, such claim is deemed to be a disputed claim (*c*), and the claimant may thereupon bring an action therefor in any competent court (*d*); consequently where such claim is for an amount within the jurisdiction of the county court (*i.e.*, not exceeding £100) the action may be brought in the county court.

Employers' Liability Act, 1880; Workmen's Compensation Act, 1906.

1498. The county court has exclusive jurisdiction under the Employers' Liability Act, 1880 (*e*), and to claims under the Workmen's Compensation Act, 1906 (*f*), which are dealt with in another part of this work (*g*).

SUB-SECT. 2.—*Procedure.*

Prescribed modes of procedure.

1499. With regard to most of the proceedings brought under statutes conferring jurisdiction, the mode of procedure is prescribed either by the statutes themselves or by the County Court Rules or special rules made thereunder. Speaking generally, three modes of procedure are prescribed, namely, by action, by petition, and by applications made in accordance with the rules as to interlocutory applications. Where by the statute or rules no special mode of procedure is prescribed, then, where the object of the proceedings is to obtain relief against any person, or to compel any person to do or abstain from doing any action, the proceedings must be commenced by action; where there is no person against whom an action can be brought, proceedings must be taken either by petition or in accordance with the rules for the time being in force as to interlocutory applications (*h*).

The general practice of the court applies to all proceedings

(*r*) Intestates Act, 1873 (36 & 37 Vict. c. 52), s. 1.
(*s*) 38 & 39 Vict. c. 27.
(*t*) *Ibid.*, s. 1.
(*a*) 46 & 47 Vict. c. 51. As to corrupt practices generally, see title ELECTIONS.
(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 29 (3), (5).
(*c*) *Ibid.*, s. 29 (7).
(*d*) *Ibid.*, s. 29 (8).
(*e*) 43 & 44 Vict. c. 42.
(*f*) 6 Edw. 7, c. 58.
(*g*) See title MASTER AND SERVANT.
(*h*) County Court Rules, Ord. 50, r. 35. An application by way of interlocutory application must be supported by affidavit, and in any case in which an interlocutory application is made the judge may, if he thinks fit, direct a petition to be filed (*ibid.*); see p. 507, *ante*.

whatsoever authorised by any existing or future Act to be commenced or taken in a county court, except in so far as such practice is inconsistent with the provisions of any such Act, or of any particular rules made as to the procedure under any such Act (*i*); and it therefore follows that in proceedings brought by action or petition where no special provisions are made as to costs or appeal the general provisions as to costs and appeals in like proceedings will apply; where under the above provision proceedings are taken by way of interlocutory application it is submitted that, as in such cases the application is an alternative to a proceeding by way of petition, an appeal will lie, moreover, although formerly no appeal would lie from an interlocutory order made in a county court, an appeal from such an order made under the equitable jurisdiction conferred by the County Courts Act now lies (*k*).

Costs and appeal.

The jurisdiction vested in the county court by the following statutes is either exclusive or concurrent with the jurisdiction of the High Court, and in some cases unlimited and in others with an expressed limit.

SECT. 2.—*Agricultural Holdings Act*, 1908.

SUB-SECT. 1.—*Jurisdiction.*

1500. Under the Agricultural Holdings Act, 1908 (*l*), exclusive and unlimited jurisdiction is conferred on the county court in respect of the following matters:— Jurisdiction.

(1) An arbitrator in any arbitration under the Act may at any stage of the proceedings, and must if so directed by the judge of the county court (which direction may be given on the application of either party), state in the form of a special case for the opinion of the county court any question of law arising in the course of the arbitration (*m*). Stating a case

(2) Where an arbitrator has misconducted himself the county court may remove him (*n*). Removal of arbitrator.

(3) Where an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the county court may set the award aside (*o*). Setting aside award.

(4) Where a sum of money, agreed or awarded under the Act to be paid for compensation, costs, or otherwise by a landlord or tenant is not paid within fourteen days after the payment becomes due it may be recovered upon order made by the county court as Recovery of compensation.

(*i*) County Court Rules, Ord. 50, r. 36.
(*k*) *Jonas* v. *Long* (1888), 20 Q. B. D. 564.
(*l*) 8 Edw. 7, c. 28. This Act, which came into operation on January 1, 1909, repeals the Agricultural Holdings Acts, 1883 (46 & 47 Vict. c. 61), 1900 (63 & 64 Vict. c. 50), and 1906 (6 Edw. 7, c. 56); the Market Gardeners' Compensation Act, 1895 (58 & 59 Vict. c. 27); and the Tenants' Compensation Act, 1890 (53 & 54 Vict. c. 57), except in so far as the last-named Act relates to compensation under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (50 & 51 Vict. c. 26); see title ALLOTMENTS, Vol. I., pp. 356 *et seq.* As to agricultural holdings, see title AGRICULTURE, Vol. I., pp. 239 *et seq.* It should be noted that the repeal affects the Acts cited in that title.
(*m*) Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 13 (3), Sched. II., r. 9.
(*n*) *Ibid.*, r. 6.
(*o*) *Ibid.*, r. 13.

SECT. 2. Agricultural Holdings Act, 1908.

money ordered to be paid by a county court under its ordinary jurisdiction is recoverable (*p*).

In cases of wrongful distress.

(5) Where any dispute arises—(i.) in respect of any distress having been levied on any holding contrary to the provisions of the Act; or (ii.) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of that stock; or (iii.) as to any other matter, or thing relating to a distress on a holding, the dispute may be heard and determined by the county court or by a court of summary jurisdiction, and any such court may make an order for the restoration of any live stock or thing unlawfully distrained, or may declare the price agreed to be paid for feeding, or make any other order which justice requires (*q*).

Appointment of guardian to infant or lunatics.

(6) On the application of any person interested the county court may, for the purposes of the Act, appoint a guardian of a landlord or tenant who is an infant without a guardian, or is of unsound mind not so found by inquisition, and may revoke the appointment and appoint another guardian if and as occasion requires (*r*).

Consents of married women.

(7) Where the concurrence of the husband is required as to any intended act of a married woman, she must be examined apart from him, touching her knowledge of the nature and effect of her intended act, by the county court or the judge of the county court for the place where she is (*s*).

SUB-SECT. 2.—*Procedure in general.*

Rules.

1501. All orders, rules, scales of costs etc. having effect under the repealed Acts have effect under the Agricultural Holdings Act, 1908 (*t*). New rules have been issued under the Act which replace the County Court Rules made under the Agricultural Holdings Acts, 1883 to 1900 (*a*).

Venue.

Except where otherwise specially provided, the jurisdiction under the Act is exercisable by the county court within the district of which the holding, or the larger part thereof, is situated (*b*).

SUB-SECT. 3.—*Procedure on Application for Statement of Special Case.*

Application for special case.

1502. An application to the judge for an order directing an arbitrator to state any question of law, in the form of a special case, must be made to the court on notice in writing, intituled in the matter of the Act and of the arbitration, and stating concisely the question of law which the applicant desires to be stated; an affidavit in support

(*p*) Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 14.
(*q*) *Ibid.*, s. 30 (1).
(*r*) *Ibid.*, s. 32.
(*s*) *Ibid.*, s. 33. Where a woman married before the commencement of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), is entitled to land, her title to which accrued before that commencement, then, if she is entitled to the land for her separate use without a restraint on anticipation, she is for the purposes of the Act deemed to be a *feme sole;* in any other case her husband's concurrence is necessary (*ibid.*). See, generally, title HUSBAND AND WIFE.
(*t*) Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 49.
(*a*) County Court Rules, Ord. 40, replacing and repealing Ord. 40 of the County Court Rules of 1903.
(*b*) Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 48.

must be filed setting forth the facts of the case and the question of law arising thereon (*c*).

Service of notice.

Copies of the application and affidavit must be served by the applicant on the parties to the arbitration, and on the arbitrator or on their respective solicitors (if any), ten clear days at least before the hearing of the application, unless the court gives leave for shorter service, in which case a copy of the order giving leave must also be served with the above-mentioned copies (*d*).

Affidavits in opposition.

Any affidavit intended to be used by any party in opposition to the application must be filed, and a copy thereof served on the applicant or his solicitor, four clear days at least before the hearing of the application, or, if leave has been given for short service of the application, in such reasonable time as the date of such service will allow (*e*).

Examination of witnesses.

A deponent to an affidavit must attend the hearing for cross-examination on notice from the other side, and witnesses may be orally examined on the hearing as in an action (*f*).

Order.

1503. The order made by the judge on the hearing of the application must be settled and signed by the registrar and sealed and filed; signed copies thereof must be served on the arbitrator and on all other persons affected thereby (*g*).

SUB-SECT. 4.—*Procedure on Statement of a Case.*

Statement of case.

1504. A case stated by an arbitrator for the opinion of the court, whether stated on his own motion or in pursuance of a direction of the court, must be intituled in the matter of the Act and of the arbitration, and must state concisely in numbered paragraphs such facts and documents as are necessary to enable the judge to decide the question of law raised thereby (*h*). Upon the argument of the case the judge and parties are at liberty to refer to the whole contents of such documents, and the judge is at liberty to draw from the facts and documents stated in the case any inference, whether of fact or law, which might have been drawn therefrom if proved at the hearing of an arbitration (*i*).

(*c*) County Court Rules, Ord. 40, r. 2 (1). For form of application, see County Court Rules, Appendix, Form 415.

(*d*) County Court Rules, Ord. 40, r. 2 (3). Service may be effected in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), under which "the notice may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there." Service on a party who does not appear must be proved before an order is made (*ibid.*).

(*e*) County Court Rules, Ord. 40, r. 2 (4).

(*f*) *Ibid.*, r. 2 (5). The notice to attend for cross-examination must be served in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), as to which see note (*d*), *supra*.

(*g*) County Court Rules, Ord. 40, r. 2 (6). Service on the arbitrator must be made in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), as to which see note (*d*), *supra*, and on the other parties in accordance with County Court Rules, Ord. 23, r. 7, that is, by the bailiff, by post or otherwise (*ibid.*).

(*h*) County Court Rules, Ord. 40, r. 3 (1).

(*i*) *Ibid.*, r. 3 (1).

SECT. 2. Agricultural Holdings Act, 1908.

The special case must be signed by the arbitrator, and may be filed with the registrar, together with a copy for the use of the judge, either by the arbitrator or by any of the parties to the arbitration (*k*). Upon the case being filed the registrar must transmit a copy to the judge, who thereupon must appoint a day for hearing (*l*). On the application, and at the cost, of any party the registrar must furnish him with a copy of the case (*m*).

Order on hearing.

1505. The registrar must settle and sign the order of the judge made on the hearing and seal and file the same. A signed copy must be served on each of the parties and on the arbitrator so that he may proceed in accordance therewith (*n*).

Remission of case for restatement.

1506. The judge may remit the case to the arbitrator for restatement or further statement (*o*).

SUB-SECT. 5.—*Procedure for removal of Arbitrator or to set aside Award.*

Removal of arbitrator etc.

1507. In applications to remove an arbitrator, or to set aside an award on the ground of the arbitrator's misconduct, or to set aside an award on the ground that the arbitration or award has been improperly procured, the arbitrator and all parties to the arbitration (other than the applicant) must be made respondents (*p*). The applicant must file an application intituled in the matter of the Act and of the arbitration, together with particulars and supported by affidavit (*q*).

Fixing day of hearing.

On the filing of the application the registrar fixes the day of hearing before the judge for any court appointed to be held within twenty-eight days from the date of the application (*r*).

(*k*) County Court Rules, Ord. 40, r, 3 (2).

(*l*) *Ibid.*, r. 3 (3). So soon as the day of hearing is fixed the registrar must give notice thereof to the parties. The day must be fixed so as to allow such notice to be given ten clear days at least before the day fixed for hearing, unless the judge with the consent of the parties fixes an earlier day. The notices may be served in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), as to which see note (*d*), p. 627, *ante*.

(*m*) County Court Rules, Ord. 40, r. 3 (4).

(*n*) *Ibid.*, r. 3 (5). The copies are to be served in accordance with County Court Rules, Ord. 23, r. 7, that is, by the bailiff, by post or otherwise (*ibid.*).

(*o*) County Court Rules, Ord. 40, r. 3 (6).

(*p*) *Ibid.*, r. 4 (1).

(*q*) *Ibid.*, r. 4 (2), (3). The particulars must contain—(1) a concise statement of the relief or order which the applicant claims and of the grounds on which the application is made; (2) the full names and addresses of the respondents and of the applicant and of his solicitor, if the proceedings are commenced through a solicitor (*ibid.*). The applicant must deliver to the respondent with the application a copy thereof and of the particulars and affidavit for the judge and for each respondent, and, where the application is to set aside an award, the applicant must file a copy of the award (*ibid.*, r. 4 (4)).

(*r*) *Ibid.*, r. 4 (5). The day of hearing must be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed (*ibid.*). If no such court is available the judge must appoint the first convenient day for the hearing, but so as to allow ten clear days for service. The hearing may be either at the place at which the court is held, or, if the judge orders, at any other court of which he is judge (*ibid.*, r. 4 (6)). Where the hearing is fixed to take place at another court, the registrar of the court in which the proceeding is pending

So soon as the day of hearing is fixed the registrar must give notice thereof in writing to the applicant and issue copies of the application, particulars, and affidavit under the seal of the court, and signed notices of the hearing for service on the respondents (*s*).

Such copies and notices must be served on each respondent ten clear days at least before the day of hearing, unless such respondent or his solicitor agrees to accept shorter notice (*a*).

Affidavits in answer.

If a respondent intends to use an affidavit on the hearing, he must file the same and serve a copy thereof on the applicant or his solicitor (*b*).

Examination of witnesses.

Witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action, and upon notice from the other side a deponent to an affidavit must attend the hearing for cross-examination (*c*).

General procedure same as in an action.

Subject to the special provisions above mentioned, the procedure on the application is the same as in an action commenced by plaint and summons in the ordinary way (*d*).

Order on hearing.

1508. The order of the judge made on the hearing must be settled and signed by the registrar and signed copies thereof served on all persons affected thereby, and such order is enforceable in the same manner as a judgment or order of the court (*e*).

must forthwith send notice thereof to the registrar of such other court and transmit the papers to him (County Court Rules, Ord. 40, r. 4 (16)).

(*s*) *Ibid.*, r. 4 (7); and see County Court Rules, Appendix, Forms, 419A—420A.

(*a*) County Court Rules, Ord. 40, r. 4 (8). Such copies and notices may be served (1) by a bailiff of a court, or, at the request of the applicant or his solicitor, (2), by the applicant or some clerk or servant in his permanent and exclusive employ, or (3) by the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them (*ibid.*, r. 4 (9)). Service may be effected either in accordance with the rules as to the service of default summonses (as to which see p. 473, *ante*), or by registered post in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28) (as to which see note (*d*), p. 627, *ante*) (*ibid.*, r. 4 (10)). Where service is effected otherwise than by a bailiff a copy of the document served, with the date and mode of service indorsed thereon, must within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor must also deliver or transmit to the registrar an affidavit of the service of such document, according to County Court Rules, Appendix, Form 37, with such variations as the circumstances of the case may require (County Court Rules, Ord. 40, r. 4 (11)).

(*b*) County Court Rules, Ord. 40, r. 4 (12). Such affidavit must be filed and served four clear days at least before the hearing of the application, or, if short notice of the application has been accepted, in such reasonable time before the hearing as the date of service will allow (*ibid.*).

(*c*) *Ibid.*, r. 4 (13). The notice to attend for cross-examination must be served in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), as to which see note (*d*), p. 627, *ante* (*ibid.*).

(*d*) County Court Rules, Ord. 40, r. 4 (14). For the purpose of the application of such rules and provisions the application is deemed to be a summons with particulars annexed, the day fixed for hearing the return day, and the applicant and respondents to be plaintiff and defendants respectively (*ibid.*). As to such summonses, see p. 460, *ante*.

(*e*) *Ibid.*, r. 4 (15). The signed copies of the order must be served in accordance with the provisions of County Court Rules, Ord. 23, r. 7, that is, by the bailiff, by post or otherwise (*ibid.*).

SECT. 2. Agricultural Holdings Act, 1908.

SUB-SECT. 6.—*Procedure for Recovery of Money or Settlement of a Dispute as to a Distress.*

Recovery of money etc.

1509. Proceedings for the recovery of money agreed to be paid as compensation, costs, or otherwise, or for the settlement of a dispute arising out of a distress (*f*), must be brought by action commenced by plaint and summons in the ordinary way, and particulars of demand must be filed stating concisely the nature of the claim in dispute and the relief or order which the plaintiff claims (*g*).

An application to recover money awarded as compensation, costs, or otherwise must be made in court on notice in writing, intituled in the matter of the Act and of the arbitration (*h*).

SUB-SECT. 7.—*Procedure for Appointment etc. of Guardians.*

Appointment of guardian.

1510. An application for the appointment or change of a guardian of an infant or a person of unsound mind not so found by inquisition must be intituled in the matter of the Act and of the arbitration or intended arbitration, and made in accordance with the rules for the time being in force as to interlocutory applications (*i*). The application must be supported by affidavit and accompanied by a written consent of the proposed guardian to act as such (*k*).

Ex parte application.

An application made on behalf of an infant or person of unsound mind may be made *ex parte* (*l*); if made by any other person interested it must be made to the judge on notice in writing, which notice, together with a copy of the affidavit, must be served three clear days at least before the day named for hearing on the persons named in the rules and in the mode therein provided (*m*).

(*f*) Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 30.

(*g*) County Court Rules, Ord. 40, r. 8.

(*h*) *Ibid.*, r. 7 (1). On filing the application the applicant must produce to the registrar the original award (or a duplicate thereof) and file a copy thereof, together with an affidavit, intituled as above, verifying both the original and copy award and the amount remaining due thereunder (*ibid.*); and see County Court Rules, Appendix, Form 421A.

Where the application is for the recovery of, or includes the recovery of, money awarded to be paid as costs, the affidavit must state the amount at which such costs have been agreed upon or allowed on taxation, and that a demand for payment of such amount has been served on the party against whom the application is made fourteen days at least before the date of the application, together with (in the case of taxation) a copy of the certificate of the result of such taxation. Service of such demand may be effected in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), as to which see note (*d*), p. 627, *ante* (County Court Rules, Ord. 40, r. 7 (2)).

A copy of the application and affidavit must be served on the respondents, and proof of such service may be made in accordance with County Court Rules, Ord. 40, r. 2 (3), and paragraphs (4) and (5) of such rule apply to proceedings on an application hereunder (*ibid.*, r. 7 (4)). For the provisions above mentioned, see note (*d*), p. 627.

The order is settled by the registrar and must be served on the persons affected thereby (*ibid.*, r. 7 (5)). Service of such order must be effected in accordance with County Court Rules, Ord. 23, r. 7, that is, by the bailiff, by post or otherwise.

(*i*) County Court Rules, Ord. 40, r. 1 (1). For the rules as to interlocutory applications, see Ord. 12, r. 11; and p. 507, *ante*.

(*k*) County Court Rules, Ord. 40, r. 1 (2).

(*l*) *Ibid.*, r. 1 (3).

(*m*) *Ibid.*, r. 1 (4). The persons who, under this rule, must be served are—"the person with whom or under whose care any person of unsound mind is

1511. An application for the removal or change of a guardian must be made to the judge on notice in writing, which notice must be served on the guardian proposed to be removed or changed or his solicitor (*n*).

SUB-SECT. 8.—*Costs.*

Proceedings.

1512. The costs of proceedings are in the discretion of the court, and the Lord Chancellor may prescribe scales of costs for such proceedings and of costs to be taxed by the registrar (*o*).

Arbitrations.

The costs of and incidental to an arbitration and award are in the discretion of the arbitrator, and are, on the application of either party, subject to taxation by the registrar of the county court, subject to review by the judge (*p*). The application to tax must be made to the registrar in writing and state on whose behalf it is made (*q*).

An application to the judge to review a taxation made by the registrar must be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications (*r*).

SUB-SECT. 9.—*Appeal.*

Appeals.

1513. There are no special provisions as to appeal either in the Act or in the County Court Rules, and therefore orders made on the hearing of a case stated, on applications to set aside an award, to remove an arbitrator, and on proceedings to recover money awarded or agreed to be paid, are subject to the ordinary rights of appeal (*s*).

SECT. 3.—*Alkali, etc. Works Regulation Act*, 1906.

Scope of Act.

1514. The Alkali, etc. Works Regulation Act, 1906 (*t*), regulates the manner in which alkali works are to be conducted, and with this

residing, and also, in the case of an infant not residing with or under the care of his father or guardian, on the father or guardian (if any) of such infant, provided that the registrar may dispense with such last-mentioned service." Service may be effected in accordance with the provisions of s. 45 of the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), as to which see note (*d*), p. 627, *ante* (County Court Rules, Ord. 40, r. 1 (4)).

(*n*) *Ibid.*, r. 1 (5). The notice must be served in accordance with the provisions of r. 1 (4), as to which see note (*m*), p. 630, *ante*.

(*o*) Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 44. "The costs to be taxed by the registrar" refer to costs of proceedings in the county court.

(*p*) *Ibid.*, Sched. II., r. 14.

(*q*) County Court Rules, Ord. 40, r. 5 (1). On receipt of such application the registrar must fix a time and place for proceeding with such taxation, and must give or send by post notice thereof in writing to the applicant and to the parties whose costs are to be taxed requiring the parties to attend and produce documents and be examined. Such notices must be given or sent four clear days at least before the day fixed for the taxation (*ibid.*, r. 5 (2)); compare County Court Rules, Appendix, Form 424. On the completion of the taxation, or (if such is the case) after a review by the judge, the registrar must give or send to each party a certificate of the result of the taxation, stating the amount at which the costs have been allowed (County Court Rules, Ord. 40, r. 5 (3)).

(*r*) County Court Rules, Ord. 40, r. 6; and see note (*o*), *supra*. For the rules as to interlocutory applications, see Ord. 12, r. 11; and p. 507, *ante*.

(*s*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*t*) 6 Edw. 7, c. 14, repealing and replacing Alkali, etc. Works Regulation Acts, 1881 and 1892 (44 & 45 Vict. c. 37; 55 & 56 Vict. c. 30). As to this Act generally, see title FACTORIES AND WORKSHOPS.

SECT. 3. Alkali, etc. Works Regulation Act, 1906.

object fines are imposed for the breach of the regulations as to the conduct of such works (*a*), as to the conduct of sulphuric acid and other works (*b*), for breach of the regulations as to registration (*c*), for the obstruction of an inspector in the execution of his duty (*d*). With the exception of the last-named fines, and also any fines incurred under the Act in respect of an offence against a special rule, which are recoverable summarily under the provisions of the Summary Jurisdiction Acts (*e*), every fine under the Act is recoverable by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed, and this jurisdiction is exclusive (*f*).

Fines, how recoverable.

Procedure.

1515. The action must be brought by the chief inspector, or such other inspector as the Local Government Board may in any particular case direct, and cannot be brought without the sanction of the central authority (*g*). Until the contrary is proved by the defendant the plaintiff is deemed to be an inspector duly authorised (*h*), and for the purpose of such action the fine is deemed to be a debt due to such inspector (*i*).

General rules of procedure apply.

The enactments, rules, and orders relating to proceedings in actions in county courts and to enforcing judgments in county courts apply as if the action related to a matter within the ordinary jurisdiction of the court (*k*).

Shorthand note.

1516. On the application of either party the court may appoint and fix the remuneration of a person to take down in writing the evidence of the witnesses, and such remuneration is deemed to be costs in the action (*l*).

Service of notices etc.

1517. Any notice, summons, or other document required or authorised to be delivered to or served on or sent to the owner of any works may be served by post, or by delivering the same to the owner or at his residence or works, and a document addressed to the registered address of an owner, or, if required to be served on or sent to the owner, addressed to the owner of the works, without naming him, at the works, is deemed to be properly addressed (*m*).

Costs.

There being no special provisions as to costs either in the Act or in the County Court Rules, the allowance of costs will be made in accordance with the general rules as to costs in an action (*n*).

Appeal.

1518. In any action under the Act either party aggrieved by the decision or direction of the court in point of law or on the merits,

(*a*) Alkali, etc. Works Regulation Act, 1906 (6 Edw. 7, c. 14), ss. 1—4.
(*b*) *Ibid.*, ss. 6—7.
(*c*) *Ibid.*, s. 9.
(*d*) *Ibid.*, s. 12.
(*e*) *Ibid.*, ss. 12 (4), 15 (3).
(*f*) *Ibid.*, s. 17 (1).
(*g*) *Ibid.*, s. 17 (2).
(*h*) *Ibid.*, s. 17 (3).
(*i*) *Ibid.*, s. 17 (2).
(*k*) *Ibid.*, s. 17 (6). As to the procedure etc. in an ordinary action, see pp. 448 *et seq.*, *ante*; and as to enforcing judgments, pp. 550 *et seq.*, *ante*.
(*l*) *Ibid.*, s. 17 (4).
(*m*) *Ibid.*, s. 21.
(*n*) See pp. 578 *et seq.*, *ante*.

or in respect of the admission or rejection of evidence, may appeal to the High Court (*o*). Subject to the special rights thus conferred the enactments and rules as to appeals in actions in county courts apply (*p*).

SECT. 3. Alkali, etc. Works Regulation Act, 1906.

SECT. 4.—*Allotments and Cottage Gardens Compensation for Crops Act*, 1887.

1519. Under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (*a*), where any money agreed or awarded to be paid for compensation, costs, or otherwise is not paid within fourteen days after the time when it is agreed or awarded to be paid, it may, by order of the judge, be recovered in the county court of the district within which the holding is situated, in the same manner as money ordered to be paid by a county court under its ordinary jurisdiction is recoverable (*b*). Jurisdiction.

1520. Proceedings to recover an amount agreed to be paid as compensation must be brought by action commenced by plaint and summons in the ordinary way. Particulars of demand must be filed stating concisely the nature of the claim and the relief or order which the plaintiff claims (*c*). Recovery of amount agreed.

1521. An application to recover an amount awarded to be paid must be made to the court on notice in writing intituled in the matter of the Act and of the arbitration (*d*). Recovery of amount awarded.

The order made upon the application is enforceable in the same manner as a judgment or order of the court (*e*).

1522. There are no special provisions as to costs either in the Act or in the County Court Rules, and the allowance of costs will therefore be made in accordance with the general rules (*f*). Costs.

(*o*) Alkali, etc. Works Regulation Act, 1906 (6 Edw. 7, c. 14), s. 17 (5).

(*p*) *Ibid.*, s. 17 (6). As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*a*) 50 & 51 Vict. c. 26, under which rights to compensation on quitting their holdings are given to occupiers of allotments and cottage gardens similar to the rights conferred on occupiers of larger holdings by the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28); see further title ALLOTMENTS, Vol. I., pp. 356 *et seq.* Under the Tenants Compensation Act, 1890 (53 & 54 Vict. c. 57), s. 2, which Act, with the exception of this provision, is repealed by the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), provision is made as to compensation to tenants in cases where a mortgagee is in possession and the tenant occupies under a lease not binding on a mortgagee. The Allotments and Cottage Gardens Compensation for Crops Act, 1887 (50 & 51 Vict. c. 26), by s. 5 defines the matters in respect of which compensation is payable, and by s. 6 provides for the deduction therefrom of any sum due to the landlord for rent or as damages for breach of contract; the landlord and tenant may agree as to the amount of compensation (*ibid.*, s. 7), and failing agreement the same must be settled by arbitration (*ibid.*, s. 7).

(*b*) *Ibid.*, s. 17.

(*c*) County Court Rules, Ord. 40, r. 8.

(*d*) *Ibid.*, r. 7 (1); for form of application, see County Court Rules, Appendix, Form 421. As to filing and service of the application and order made thereon, see note (*h*), p. 630, *ante*.

(*e*) County Court Rules, Ord. 40, r. 7 (5). For form of order, see County Court Rules, Appendix, Form 422. As to enforcing judgments generally, see pp. 550 *et seq.*, *ante*.

(*f*) As to costs generally, see pp. 578 *et seq.*, *ante*.

SECT. 4. Allotments and Cottage Gardens Compensation for Crops Act, 1887.

1523. Neither the Act nor the rules contain any special provisions as to appeals, and applications made hereunder are therefore subject to the ordinary rights of appeal (*g*).

SECT. 5.—*Allotments Extension Act*, 1882.

1524. The general scope of the Allotments Extension Act, 1882 (*h*), is to compel trustees in whom lands are vested for the benefit of the poor of the parish to set aside a portion of such lands for letting as allotments (*i*).

Jurisdiction.

Jurisdiction is conferred on the county court judge of the district in which the land is situated (1) to fix a time for giving public notice that a field or a portion of land has been set apart under the Act (*k*); (2) to fix a time for giving the first public notice of the intention to let an allotment where the trustees have failed to do so (*l*).

Procedure.

1525. An application under the above provisions must be intituled in the matter of the Act and of the land and be made in accordance with the rules for the time being in force as to interlocutory applications, and must be supported by affidavit. If made on the application of a person other than the trustees notice thereof must be given to the trustees (*m*).

Costs.

1526. There are no special provisions as to costs either in the Act or in the County Court Rules, and the costs will therefore be in the discretion of the court in accordance with the rule relating to the costs of an interlocutory application generally (*n*).

SECT. 6.—*Army Act*, 1881.

Jurisdiction.

1527. In cases of emergency any general or field officer commanding His Majesty's regular forces in any military district in the United Kingdom may be empowered by His Majesty to issue a requisition of emergency requiring a justice of the peace to issue his warrant for the impressment of such carriages, animals, or vessels used for transport upon any canal or navigable river as may be required for the purpose of moving the regimental baggage and regimental stores of the forces, or for such other purposes as are mentioned in such requisition (*o*); payment must be made by a Secretary of State for carriages, animals, and vessels so impressed (*p*) at the rates fixed by the statute (*q*), and any difference respecting

(*g*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*h*) 45 & 46 Vict. c. 80.

(*i*) *Ibid.*, s. 4; and see generally title ALLOTMENTS, Vol. I., pp. 338 *et seq.*

(*k*) Allotments Extension Act, 1882 (45 & 46 Vict. c. 80), Sched., r. 2.

(*l*) *Ibid.*, Sched., r. 4.

(*m*) County Court Rules, Ord. 50, r. 15. As to interlocutory applications generally, see Ord. 12, r. 11; and pp. 507 *et seq.*, *ante*.

(*n*) County Court Rules, Ord. 12, r. 11 (4).

(*o*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 115 (1); and see *ibid.*, s. 112; and title ROYAL FORCES.

(*p*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 115 (4).

(*q*) *Ibid.*, Sched. III.

SECT. 6. Army Act, 1881.

the amount of such payment must be determined by a county court judge having jurisdiction in the place in which the carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition (*a*).

Procedure.

1528. The application for the determination of a difference must be made by action commenced by plaint and summons in the ordinary way, and particulars of demand, stating concisely the relief or order claimed, must be filed with the application (*b*).

Appeal.

1529. The fact that the jurisdiction mentioned above is conferred on the judge, and not on the county court, does not affect the general right of appeal, the proceedings being by action (*c*). As, however, the only question which, apparently, the judge has to determine is one of fact, namely, the amount of payment, as to which no appeal lies (*d*), it would appear that, in practice, appeals can only arise in cases where there has been an improper admission or rejection of evidence.

SECT. 7.—*Ballot Act*, 1872.

Jurisdiction.

1530. By the Ballot Act, 1872 (*e*), the same jurisdiction is conferred on the county court in respect of municipal elections as is exercised by the House of Commons or the High Court in respect of parliamentary elections (*f*), namely, (1) to order the production and inspection of any rejected ballot papers, if satisfied by evidence on oath that such inspection or production is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return (*g*); (2) to order sealed packets of counterfoils to be opened and to allow the inspection of counted ballot papers in the custody of the town clerk of the municipal borough in which the election is held (*h*).

Procedure.

1531. An application to the court under the above provisions must be made in writing in accordance with the rules for the time being in force as to interlocutory applications and intituled in the matter of the Ballot Act, 1872, and of the particular matter (*i*).

(*a*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 115 (4).

(*b*) County Court Rules, Ord. 50, r. 14.

(*c*) On the question of appeal generally from county courts, see pp. 601 *et seq.*, *ante;* and see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120, under which an appeal lies from the determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence.

(*d*) *Ibid.*

(*e*) 35 & 36 Vict. c. 33. As to municipal elections generally, see title ELECTIONS.

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part II., r. 64 (b) (a).

(*g*) *Ibid.*, r. 40. The order may impose conditions as to persons, time, place, and mode of inspection or production (*ibid.*).

(*h*) *Ibid.*, r. 41. The order may impose conditions as to persons, time, place, and mode of opening or inspection (*ibid.*). For a precedent of a form of order, see *R.* v. *Beardsall* (1876), 1 Q. B. D. 452.

(*i*) County Court Rules, Ord. 50, r. 5. As to procedure on interlocutory applications generally, see Ord. 12, r. 11; and p. 507, *ante.*

SECT. 7. Ballot Act, 1872.

Unless by consent or order, only oral evidence is admitted on the hearing (*k*).

Costs.

1532. A special order is required for costs, which may be allowed on such scale as the judge may direct (*l*).

SECT. 8.—*Brine Pumping (Compensation for Subsidence) Act*, 1891.

Award of compensation.

1533. Under the Brine Pumping (Compensation for Subsidence) Act, 1891 (*m*), provision is made for the formation of compensation boards, who may award, in the manner defined in the Act, compensation for subsidence due to the pumping of brine, and exclusive jurisdiction is conferred on the county court with regard to sums claimed from or awarded by such compensation boards in the following respects:—

Recovery.

(1) Where a compensation board has awarded a sum as compensation, such sum must be certified by the clerk of such board under his hand, and thereupon may, at the expiration of three months from the date of such certificate, be recovered as a debt in the county court within whose jurisdiction the property to which the claim relates is situate (*n*).

Appeal against disallowance.

(2) If a compensation board disallow a claim, wholly or in part, on the ground that the claimant had not such title or interest in the property to which the claim relates as would entitle him to compensation under the Act, or if a compensation board allow a claim or any item thereof, the following rights of appeal to the county court are given:—The claimant may appeal on the ground that he had such right or interest in the property damaged as entitled him to compensation (*o*), and where a claim, or any item thereof, is allowed, any person assessed to the last rate made under the Act in and for the district may appeal against such allowance on the ground that the claimant had not such title or interest in the property damaged as would entitle him to recover compensation (*p*). In no case is there any right of appeal where the amount claimed does not exceed £100 (*q*).

Procedure.

1534. Proceedings to recover an amount awarded as compensation are commenced by plaint and summons in the ordinary way (*r*). In appeals to the county court from the decision of a compensation board notice of appeal must be given in writing to the board at the meeting at which such decision is given, or within three weeks afterwards (*s*), and within fourteen days from the date of giving such notice the appellant must file with the registrar of the county court a written statement of the decision of the board and of the grounds

(*k*) County Court Rules, Ord. 50, r. 5.
(*l*) *Ibid.*
(*m*) 54 & 55 Vict. c. 40; see, generally, title MINES, MINERALS AND QUARRIES.
(*n*) *Ibid.*, s. 26.
(*o*) *Ibid.*, s. 27 (1).
(*p*) *Ibid.*, s. 27 (2).
(*q*) *Ibid.*, s. 29.
(*r*) *Ibid.*, s. 26; and see pp. 460 *et seq.*, *ante*.
(*s*) *Ibid.*, s. 27 (3).

of appeal, together with as many copies thereof as there are respondents to the appeal (*t*).

The registrar thereupon must enter a plaint and issue a summons calling upon the board and (in case of an appeal against an allowance) upon the claimaint to show cause why the decision of the board should not be reversed or modified, and must annex to the summons for service upon each respondent a copy of the statement filed by the appellant, which copy is deemed to be a part of the summons (*a*).

Effect of appeal.

1535. Where in consequence of a decision on appeal any damage is to be assessed, increased, or reduced, the claim must stand remitted to the board to be adjudged and allowed, altered, increased, or reduced, as the case may require (*b*).

Costs.

1536. The costs of an action to recover compensation are the same as in any other action (*c*). The costs of an appeal are in the discretion of the court in which the same are incurred (*d*); subject to this discretion the practice, procedure, and costs in an action are applicable to appeals from the decision of a board (*e*).

Appeal.

1537. Actions to recover a sum awarded as compensation are clearly subject to the ordinary rights of appeal in an action, and as appeals from a decision of a board are brought by plaint and summons these also would appear to be subject to the same right of appeal (*f*).

SECT. 9.—*Building Societies Act*, 1874.

Jurisdiction

1538. By the Building Societies Act, 1874 (*g*), jurisdiction in relation to building societies is conferred exclusively on the court as therein defined, namely, the county court of the district in which the chief office or place of meeting for the business of the society is situate (*h*), to wind up the society (*i*) and in respect of the following matters:—

Failure of officers to account etc.

(1) Every officer of a society having the receipt or charge of money is by the Act required to give security, either by bond or

(*t*) County Court Rules, Ord. 50, r. 19.
(*a*) *Ibid.*, r. 20.
(*b*) Brine Pumping (Compensation for Subsidence) Act, 1891 (54 & 55 Vict. c. 40), s. 27 (7).
(*c*) As to costs generally, see pp. 578 *et seq.*, *ante*.
(*d*) Brine Pumping (Compensation for Subsidence) Act, 1891 (54 & 55 Vict. c. 40), s. 27 (6).
(*e*) County Court Rules, Ord. 50, r. 21; as to costs generally, see pp. 578 *et seq.*, *ante*.
(*f*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.
(*g*) 37 & 38 Vict. c. 42; as to building societies generally, see title BUILDING SOCIETIES, Vol. III., pp. 321 *et seq.*
(*h*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 4.
(*i*) *Ibid.*, s. 32 (4). This provision is no longer of importance, as by the Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8, the provisions of the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), now repealed and replaced by Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 122 *et seq.*, are extended to building societies. As to this and as to winding-up of building societies generally, see titles BUILDING SOCIETIES, Vol. III., pp. 394 *et seq.*; COMPANIES, Vol. V.

SECT. 9. Building Societies Act, 1874.

otherwise, for the due performance of his duties (*k*), and every such officer, his executor or administrator, must, upon proper demand, give in his account to the society, and pay over all the moneys remaining in his hands and deliver all securities and effects, books, papers, and property of the society in his hands or custody to such person as the society appoints; and in case of neglect or refusal to render such account, or to pay and deliver such money and property, the society may sue upon the bond given by such officer, or may apply to the court, who may proceed in a summary way and make such order thereon as seems just, which order is to be final and conclusive (*l*).

Failure to comply with award.

(2) Under the Act provision is made for the reference of disputes to arbitrators (*m*), whose awards are to determine such disputes (*n*). The award must limit the time within which it must be complied with or conformed to, and should either of the parties to the dispute refuse or neglect to comply with or conform to such award within the time so limited, then, upon the petition of any person concerned, the court must enforce compliance therewith (*o*).

Reference of disputes.

(3) The court may hear and determine a dispute where the rules of the society direct disputes to be referred to the court or to justices (*p*), or if it appears to the court, upon the petition of any person concerned, that application has been made by either party to a dispute to the other party, for the purpose of having such dispute settled by arbitration under the rules of the society, and that such application has not been complied with within forty days, or that the arbitrators have refused, or have neglected for a period of twenty-one days, to make any award (*q*).

Procedure.

1539. Every society registered under the Act sues and is sued in its registered name (*r*).

Refusal to account etc.

1540. An application to the court against an officer upon his refusal to account or to pay over and deliver the money and property of the society, whether any bond is put in suit or not, is made by action commenced by plaint and summons in the ordinary way, the society being made plaintiffs and the officer against whom the application is made defendant (*s*).

Particulars of demand must be filed with the application (*t*) if the application is made without putting the bond in suit; such

(*k*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 23.
(*l*) 37 & 38 Vict. c. 42, s. 24.
(*m*) *Ibid.*, s. 34.
(*n*) *Ibid.*, s. 34. Where the parties to any dispute agree to refer the dispute to the registrar, or where the rules of the society direct disputes to be referred to the registrar, the award of the registrar has the same effect as that of arbitrators (*ibid.*). "Registrar" in the above section means the registrar for the time being of friendly societies (*ibid.*, s. 3).
(*o*) *Ibid.*, s. 34. As to the meaning of "disputes," see Building Societies Act, 1884 (47 & 48 Vict. c. 41), s. 2; and title BUILDING SOCIETIES, Vol. III., p. 388.
(*p*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 35 (2); and see note (*o*), *supra*.
(*q*) *Ibid.*, s. 35 (1); and see note (*o*), *supra*.
(*r*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 9, 27.
(*s*) County Court Rules, Ord. 41, r. 7.
(*t*) *Ibid.*, r. 8.

particulars must state shortly the nature of the thing required to be done or the neglect complained of (*a*), and if the thing required to be done is the delivery up of any property the particulars must contain a description of such property (*b*).

Enforcement of award.

1541. An application to enforce an award is made by action commenced by plaint and summons in the ordinary way, and particulars of demand must be filed with the application stating concisely the relief or order which the plaintiff claims; the party entitled or claiming to be entitled to the benefit of the award must be made plaintiff and the party against whom the award is given defendant (*c*).

Proof must be given of the making of the award and of the refusal to comply therewith (*d*).

Reference of dispute.

1542. The reference of a dispute to the court is made by action commenced by plaint and summons in the ordinary way (*e*); particulars of demand must be filed stating concisely the nature of the dispute referred and the relief or order which the plaintiff claims (*f*). The claiming or aggrieved member must be made plaintiff and the society defendants (*g*).

Case for opinion of High Court.

The determination of a dispute is binding and conclusive on all parties, and is not subject to appeal or removable into any court of law or restrainable by injunction, but the court may, at the request of either party, state a case for the opinion of the High Court on any question of law, and may grant to either party discovery as to documents and otherwise, such discovery to be made on behalf of the society by such officer of the society as the court may determine (*h*).

Costs.

1543. No special provision as to costs is made either by the Act or the County Court Rules, and, as the proceedings are in every case by action, the ordinary rules as to costs in an action will apply (*i*).

Appeal.

1544. The only express provision as to appeal is that contained in s. 36 of the Building Societies Act, 1874, under which a decision on a dispute is final and not subject to appeal (*k*); other proceedings would seem, therefore, to be subject to the ordinary right of appeal in an action (*l*).

(*a*) County Court Rules, Ord. 41, r. 9.
(*b*) *Ibid.*, r. 10.
(*c*) *Ibid.*, r. 4. It is to be noted that under the Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 34, the court may enforce an award upon the "petition" of any person concerned; the procedure in such a case is, however, clearly dealt with by Ord. 41, r. 4, and the application must therefore be made in the mode indicated above.
(*d*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 34.
(*e*) County Court Rules, Ord. 41, r. 1.
(*f*) *Ibid.*, r. 3.
(*g*) *Ibid.*, r. 2.
(*h*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 36.
(*i*) See also County Court Rules, Ord. 50, r. 36; and as to costs generally, pp. 578 *et seq.*, *ante*.
(*k*) See note (*h*), *supra*.
(*l*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

SECT. 10. Charitable Trusts Acts, 1853 to 1891.

SECT. 10.—*Charitable Trusts Acts, 1853 to 1891.*

Jurisdiction.

1545. The county court is as regards charities with an income of not more than £50 a year invested with jurisdiction to appoint new trustees of such charities, and to make such other orders with regard to the administration in the same manner as the Chancery Division of the High Court, subject to the general approval of the Charity Commissioners (*m*). With the above-stated limit this jurisdiction is concurrent with that of the High Court.

Proceedings must be commenced in the county court of the district within which the charity is established or administered, or within which the income is applicable, or, where the charity falls within several districts, in the county court of any one of such districts (*n*); where two or more county courts have concurrent jurisdiction in respect of the same charity the Charity Commissioners may order to which court any application with respect to such charity shall be made (*o*).

Notice to Charity Commissioners.

1546. Notice of legal proceedings as to any charity by any person except the Attorney-General must be given to the Charity Commissioners, and the courts may not entertain such proceedings except upon certificate of such Commissioners (*p*). Before any application is made to the court for a scheme or for the appointment or removal of trustees notice in writing of such application must be given in such manner as the Board may direct (*q*). No court in any proceeding under the Act has any jurisdiction to try a question of title or to try or determine any question as to the existence or extent of any charge or trust (*r*). The court has power to authorise the official trustees of charitable funds to call for a transfer of, and transfer, stocks and shares, and to order payment to such trustees of any principal moneys of any charity (*s*), and to make an order for them to receive and recover all dividends, interest, and income on such stock etc. which are for the time being in arrear (*t*).

Power to direct applications to be made to High Court.

The Charity Commissioners may direct applications which are within the jurisdiction of a county court to be made to a judge of the Court of Chancery in the first instance (*a*). No order of a county court for the appointment or removal of trustees or approval of a scheme is valid until confirmed by the Charity Commis-

(*m*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 32, as amended by the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 11; see title CHARITIES, Vol. IV., pp. 301 *et seq.*

(*n*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 32.

(*o*) *Ibid.*, s. 34.

(*p*) *Ibid.*, ss. 17, 18. As to proceedings by the Attorney-General, see title CHARITIES, Vol. IV., pp. 312 *et seq.*; and as to the certificate of the Charity Commissioners, see *ibid.*, p. 321.

(*q*) *Ibid.*, s. 42.

(*r*) *Ibid.*, s. 41.

(*s*) Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 12; see also *ibid.*, s. 25. As to the official trustees of charitable funds, see title CHARITIES, Vol. IV., pp. 280 *et seq.*

(*t*) Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s 12.

(*u*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 35.

sioners (*b*), and such Commissioners, if dissatisfied with such order, may remit the matter to the county court for reconsideration, or may transfer the matter to a judge of the Court of Chancery (*c*).

Procedure.

1547. A person desirous of taking proceedings must produce to the registrar the order or certificate of the Charity Commissioners authorising such proceedings (*d*); the registrar thereupon issues a summons in the prescribed form (*e*). The person producing the order is deemed to be the plaintiff and the persons summoned the defendants (*f*).

The registrar if required by the plaintiff issues notices to be served on any person indicated by the plaintiff to attend the proceedings (*g*), or, in case he is not so required, a notice of hearing (*h*).

At the hearing any person who has been summoned or has received notice to attend proceedings, or who is authorised to apply under s. 43 of the Charitable Trusts Act, 1853 (*i*), may appear and be heard in opposition to the application subject to the payment of such costs as the judge may direct (*k*).

General rules to apply.

The enactments, orders as to fees, practice, and forms in force and used in the county courts must *mutatis mutandis* be adopted, so far as the same are applicable with reference to proceedings in matters of charitable trusts (*l*).

Appeal.

1548. Any person (other than the Attorney-General acting *ex officio*) authorised to make any application under the Charitable Trusts Acts, or any person who has been made a party to a proceeding upon an application under the Acts, may within one calendar month of the making of an order by the county court

(*b*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 36; see *Re Donington-on-Baine Church Estate* (1860), 6 Jur. (N. S.) 290.

(*c*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 37.

(*d*) County Court Rules, Ord. 48, r. 2.

(*e*) *Ibid.*, r. 4. The summons must state the substance of the certificate, order, or statement (*ibid.*). For the form of summons, see County Court Rules, Appendix, Form 434.

(*f*) County Court Rules, Ord. 48, r. 2. As to the procedure in proceedings by the Attorney-General, see *ibid.*, r. 3.

(*g*) *Ibid.*, r. 5; that is, on persons other than the defendants (*ibid.*); and see *ibid.*, r. 6. For the form of notice, see County Court Rules, Appendix, Form 435.

(*h*) County Court Rules, Ord. 48, r. 7. For the form of notice of hearing, see County Court Rules, Appendix, Form 436; and see County Court Rules, Ord. 48, r. 8. The judge may direct what additional persons must be served with a summons or notice to attend proceedings or notice of hearing. Upon the requisition of the Charity Commissioners, or of the Attorney-General, in proceedings instituted by him, the registrar must transmit to them or him a copy of the judge's note of the evidence taken at the hearing, or such part thereof as the Commissioners or the Attorney-General may require (*ibid.*, rr. 9—11).

(*i*) 16 & 17 Vict. c. 137. For the persons so authorised, see title CHARITIES, Vol. IV., p. 315.

(*k*) County Court Rules, Ord. 48, r. 17.

(*l*) *Ibid.*, r. 19; and see Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 38, under which proceedings to be taken in a county court, and all orders and directions made or given by any such court, shall respectively be subject to the same rules and regulations, and have the same effect and be registered, enforced, and executed in the same manner as the other proceedings, orders, judgments, and directions of the court under its ordinary jurisdiction.

SECT. 10. Charitable Trusts Acts, 1853 to 1891.

upon such application give notice in writing to such court and also to the Board (*m*) that he is desirous of appealing against such order; and if the Board give a certificate that such appeal should be entertained, the county court must suspend all proceedings upon the order appealed against during such time as the circumstances may require (*n*). The Board may require the person giving such notice of appeal to give security, in such sum as to the Board seems reasonable, to pay such costs of the proceedings on the appeal as shall be ordered to be paid by such appellant, and also (if the Board think fit) to indemnify the charity against the costs and expenses of and attending such appeal (*o*).

Appeal by Attorney-General.

The Attorney-General (acting *ex officio*) may, at any time within three calendar months after the making by a county court of any order under the Charitable Trusts Acts, lodge an appeal against such order without giving any such notice or security as is above mentioned, and such appeal is thereupon to have the same effect as any other appeal under the Act (*p*).

After the order sanctioning an appeal has been made the appellant must within three calendar months present a petition to the Chancery Division, and upon the hearing of such petition the court may confirm, reverse, or vary the order appealed against, or may remit such order to the county court by which the same was made, with or without any direction in relation thereto, or may proceed in relation to the charity to which such order relates as in the case of an application under the Charitable Trusts Act, 1853 (*q*), to a judge of the Chancery Division at chambers; if the party allowed to appeal does not present a petition of appeal within three calendar months, the order against which appeal was allowed is final (*r*).

Charitable (Trusts) Recovery Act, 1891.

1549. Under the Charitable (Trusts) Recovery Act, 1891 (*a*), the

(*m*) The Board is defined as "the Charity Commissioners for England and Wales" (Charitable Trusts (Recovery) Act, 1891 (54 Vict. c. 17), s. 2).

(*n*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 39. For an example of such an appeal, see *Re Donington-on-Baine Church Estate* (1860), 6 Jur (N. S.) 290.

(*o*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 39. The security is to be given by the appellant becoming bound, with two sufficient sureties to be approved by the registrar of the county court; such bonds are exempt from duty (*ibid.*). In case costs, adjudged on such appeal to be paid by the party allowed to appeal, are not paid such bonds may be put in suit and the money recovered applied to indemnify the charity, person, or estate damnified, or otherwise in such manner as the justice of the case may require and as to the court or judge by whom such appeal was heard seems fit (*ibid.*, s. 40).

(*p*) *Ibid.*, s. 39. No form of notice of appeal is given in the County Court Rules, and the form of notice of appeal given in the schedule to the Charitable Trusts Orders, 1853, should be used with the necessary modifications.

(*q*) 16 & 17 Vict. c. 137. As to proceedings in chambers, see title CHARITIES, Vol. IV., pp. 335 *et seq.*

(*r*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 40. As to the orders that may be made by the Court of Chancery upon such appeal, see *ibid.*; the petition must set forth the order appealed against and the order allowing the same and pray such relief as the case may require (*ibid.*).

(*a*) 54 Vict. c. 17. This Act is to be construed together with the Charitable Trusts Acts, 1853 to 1869, and they may be cited together as the Charitable Trusts Acts, 1853 to 1891. As to this Act, see title CHARITIES, Vol. IV., p. 322.

SECT. 10. Charitable Trusts Acts, 1853 to 1891.

Charity Commissioners may, with the sanction of the Attorney-General, sue for the recovery of property belonging to charities (*b*). The Act provides the mode of procedure (*c*), and gives special remedies to the Charity Commissioners (*d*). The rules made under the Act make provision as to parties (*e*), notice under s. 5 (1) of the Act (*f*), and discovery (*g*). Except as therein specially provided, the procedure is the same as in any other proceeding of a like nature under the ordinary jurisdiction of the court, and the general provisions as to appeal will apply to such proceedings.

Costs.

1550. In any proceedings under the Charitable Trusts Acts, 1853 to 1891, the judge may order the costs to be taxed under column A, B, or C, and in default of any such order they must be taxed under column B, without prejudice, however, to the privilege of the Attorney-General as to costs (*h*); the fees and the mode in which they are to be calculated are prescribed by the rules (*i*).

SECT. 11.—*Collecting Societies and Industrial Assurance Companies Act*, 1896.

Jurisdiction.

1551. Under the Collecting Societies and Industrial Assurance Companies Act, 1896 (*k*), any member of, or any person insured in, such society or company to which the Act applies, or any person claiming through such member or person, may apply to the county court for the place where the applicant resides to settle a dispute between the applicant and such society and company (*l*).

In a dispute with an industrial assurance society the county court jurisdiction under this provision is limited to disputes arising in respect of policies originally granted for a sum less than £20 (*m*).

Procedure.

The court must settle the dispute according to the provisions of the Friendly Societies Act, 1896 (*n*).

SECT. 12.—*Commons Act*, 1876.

Jurisdiction.

1552. The Commons Act, 1876 (*o*), gives to the Board of Agriculture and Fisheries certain powers with regard to the inclosure

(*b*) Charitable (Trusts) Recovery Act, 1891 (54 Vict. c. 17), s. 3.
(*c*) *Ibid.*, s. 4.
(*d*) *Ibid*, s. 5.
(*e*) County Court Rules, Ord. 48, r. 21.
(*f*) *Ibid.*, r. 22.
(*g*) *Ibid.*, r. 23.
(*h*) County Court Rules, Ord. 48, r. 24. As to the Attorney-General and costs, see title CHARITIES, Vol. IV., pp. 340 *et seq.*
(*i*) County Court Rules, Ord. 48, rr. 13—16.
(*k*) 59 & 60 Vict. c. 26. As to such societies and companies, see generally, title INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.
(*l*) Collecting Societies and Industrial Assurance Companies Act, 1896 (59 & 60 Vict. c. 26), s. 7.
(*m*) *Cowling* v. *Topping*, [1906] 1 K. B. 466.
(*n*) Collecting Societies and Industrial Assurance Companies Act, 1896 (59 & 60 Vict. c. 26), s. 7. For the procedure, costs, appeal etc. on the settlement of a dispute under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), see pp. 651 *et seq.*, *post*.
(*o*) 39 & 40 Vict. 56.

SECT. 12. Commons Act, 1876.

of and deals with the general regulation of commons (*p*). The county court within the jurisdiction of which any common or part of a common is situated has jurisdiction to hear any case relating to any illegal inclosure, or encroachment of or upon such common or part of a common, respectively made after the 11th of August, 1876, or to any nuisance impeding the exercise of any right of common arising after the same date, and to grant an injunction against such inclosure, encroachment, or nuisance, or order the removal or abatement of the same (*q*).

Procedure.

1553. Proceedings are commenced by plaint and summons as in an ordinary county court action, and particulars of demand, stating concisely the relief or order claimed, must be filed in every case (*r*).

Appeal.

1554. Any person aggrieved by any injunction or order of the county court, or by the refusal of the same, may, on giving security for costs to the satisfaction of the county court, appeal to the High Court in a summary manner, or by special case, or otherwise, as prescribed by the Rules of the Supreme Court, and the appellate court may reverse, modify, or confirm the injunction or order of the county court, or remit the same to the county court with directions to deal with the same (*s*).

The lodging of an appeal suspends the operation of an order made in the county court during the time such appeal is pending (*t*).

SECT. 13.—*Court of Probate Acts*, 1857 *and* 1858.

Jurisdiction.

1555. By the Court of Probate Act, 1857 (*a*), as amended by the Court of Probate Act, 1858 (*b*), jurisdiction is conferred on the county court in contentious probate matters concurrently with the High Court but limited to estates in which the testator or intestate left personal estate not exceeding £200 and did not possess real estate of more than £300 in value (*c*); the jurisdiction is exercisable by the judge of the county court having jurisdiction in the place in which the deceased at the time of his death had a fixed place of abode (*d*). The judge before whom any contentious question is raised under the Act has the same

(*p*) See generally, title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 509 *et seq.*

(*q*) Commons Act, 1876 (39 & 40 Vict. c. 56), s. 30, extended to metropolitan commons by s. 3 of the Metropolitan Commons Act, 1878 (41 & 42 Vict. c. 71).

(*r*) County Court Rules, Ord. 50, r. 9.

(*s*) Commons Act, 1876 (39 & 40 Vict. c. 56), s. 30. No special rules have been framed, and the appeal must be proceeded with in accordance with the rules governing appeals from the county court in ordinary cases (*ibid.*). As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*t*) Commons Act, 1876 (39 & 40 Vict. c. 56), s. 30.

(*a*) 20 & 21 Vict. c. 77; and see title EXECUTORS AND ADMINISTRATORS.

(*b*) 21 & 22 Vict. c. 95.

(*c*) *Ibid.*, s. 10 replacing s. 45 of Court of Probate Act, 1857 (20 & 21 Vict. c. 77); the £200 mentioned is "before and without deducting anything on account of the debts due and owing from the deceased."

(*d*) *Ibid.*, s. 10.

jurisdiction, power, and authority therein as if the same were an ordinary action in the county court (*e*). Where application is made for probate or administration to the principal Probate Registry in cases coming within the jurisdiction conferred on the county court (*f*), the judge of the Probate Division may (*g*) send any contentious cause arising out of such application to the county court having jurisdiction therein, and the judge of such county court may proceed therein as if such application and cause had been made to and had arisen in his court in the first instance (*h*).

1556. All proceedings are by action commenced by plaint and summons in the ordinary way; the plaint and all subsequent proceedings must be intituled "The Court of Probate Acts, 1857 and 1858" (*i*). Procedure.

In proceedings to obtain a grant of probate or letters of administration which are taken after a caveat against a grant has been lodged, the person applying for the grant must be made plaintiff and the person who has lodged the caveat defendant (*k*).

In proceedings for the revocation of probate or letters of administration the person applying for revocation must be made plaintiff and the person against whom the application is made defendant (*l*).

The plaintiff must lodge with the registrar an office copy of the minute of the High Court authorising the commencement of proceedings (*m*).

Where any contentious matter is sent by the High Court to the county court (*n*) the above provisions as to procedure and the provisions of the County Court Rules relating to actions or matters Remitted matters.

(*e*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 56. It is to be noted that the county court jurisdiction is only the same as that in an ordinary action in the court, and is not co-extensive with the jurisdiction conferred on the Court of Probate; thus, the power given to the Court of Probate by *ibid.*, s. 26, to order the production of all testamentary papers, is not extended to the county court.

(*f*) *Davies* v. *Brecknell* (1870), L. R. 2 P. & D. 177; *Thomas* v. *Nurse* (1870), 39 L. J. (P. & M.) 80.

(*g*) *Slater* v. *Alvey* (1870), L. R. 2 P. & D. 154.

(*h*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 59; Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 12, which extends the application of this section to an application for the revocation of a grant of probate or administration; *Zealley* v. *Veryard* (1866), L. R. 1 P. & D. 195; *Macleur* v. *Macleur* (1868), L. R. 1 P. & D. 604.

(*i*) County Court Rules, Ord. 49, r. 1

(*k*) *Ibid.*, r. 2.

(*l*) *Ibid.*, r. 3.

(*m*) *Ibid.*, r. 4. The minute referred to is a minute showing that the registrar of the principal registry is satisfied by affidavit that the county court has jurisdiction; see Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 10. Particulars of demand must be filed in all cases, and any person not named in the summons may intervene and appear in the action on filing an affidavit showing how he is interested in the estate of the deceased. The order of the judge must be in the prescribed form, and a copy thereof must be sent by the registrar to the plaintiff and the defendant and to any party intervening (County Court Rules, Ord. 49, rr. 5, 6, 9; County Court Rules, Appendix, Form 445).

(*n*) Under Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 59; and see p. 644, *ante*.

SECT. 13. Court of Probate Acts, 1857 and 1858.

remitted from the Chancery Division of the High Court (*n*) apply to such proceedings in the county court (*o*).

Where no provision is otherwise made the rules and practice of the Probate Division of the High Court must be followed so far as they are applicable (*a*).

Costs.

1557. The judge may order the costs of proceedings to be taxed under column B or column C, and in default of any such order they are taxed under column B; the judge may make an order for the allowance of any of the special items of costs mentioned in Ord. 53, r. 8, of the County Court Rules (*b*). The judge's power over costs extends to the costs of a transferred action incurred before the transfer, and the judge of the Probate Division has no power to make an order as to such costs (*c*).

Appeal.

1558. Any party who is dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence, may appeal from the same to the Probate Division (*d*), whose decision is final (*e*). An appeal also lies under the County Courts Act, 1888 (*f*), to a divisional court of the Probate, Divorce, and Admiralty Division (*g*).

SECT. 14.—*Employers and Workmen Act*, 1875.

Jurisdiction.

1559. The Employers and Workmen Act, 1875 (*h*), provides that in any proceeding before a county court in relation to any dispute between an employer and workman (*i*) arising out of or incidental to their relation as such, the court, in addition to any jurisdiction it might have exercised if the Act had not been passed, has exclusive jurisdiction to (1) adjust and set off one against the other claims of the employer or workman arising out of or incidental to

(*n*) For these provisions, see County Court Rules, Ord. 33; and p. 442, *ante*.

(*o*) County Court Rules, Ord. 49, r. 10.

(*a*) *Ibid.*, r. 12.

(*b*) *Ibid.*, r. 11. Where a party opposing a will gives notice that he merely insists on the will being proved in solemn form, and that he only intends to cross-examine the witnesses, the county court judge has no power to condemn him in costs (*Leigh* v. *Green*, [1892] P. 17).

(*c*) *Macleur* v. *Macleur* (1868), L. R. 1 P. & D. 604.

(*d*) In the case of a transferred action the Probate Division cannot grant a new trial or make any order in the cause except by way of appeal (*Zealley* v. *Veryard* (1866), L. R. 1 P. & D. 195).

(*e*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 58. As to an appeal under this section, see *Copeland* v. *Simister*, [1893] P. 16.

(*f*) 51 & 52 Vict. c. 43, s. 120; see pp. 601 *et seq.*, *ante*.

(*g*) R. S. C., Ord. 59, r. 4. There are no express rules as to procedure on appeals to the Probate, Divorce, and Admiralty Division, R. S. C., Ord. 59, rr. 9—19, only applying to appeals to the King's Bench Division.

(*h*) 38 & 39 Vict. c. 90; see title MASTER AND SERVANT.

(*i*) *Ibid.*, s. 10, defines workman as follows: "The expression 'workman' does not include a domestic or menial servant, but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour."

the relation between them, whether for wages, damages, or otherwise, and whether liquidated or unliquidated (*k*); (2) rescind any contract between the employer and the workman (if, having regard to all the circumstances, it is just to do so) upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as may be just (*l*); (3) in cases where the court might otherwise award damages for any breach of contract, and the defendant is willing to give security for the performance of his contract, the court may, with the consent of the plaintiff, accept such security and order performance of the contract in lieu of awarding damages or of some part thereof (*m*).

1560. There are no special provisions as to procedure, nor are any necessary, as the Act only provides remedies which, in addition to the ordinary remedies, may be given in a *pending* proceeding (*n*). Procedure.

SECT. 15.—*Extraordinary Tithe Redemption Act*, 1886.

1561. By the Extraordinary Tithe Redemption Act, 1886 (*o*), provision is made for the substitution of a rentcharge for extraordinary tithes, and where default is made in the payment of an instalment of such rentcharge it may be recovered by action in the High Court or in the county court, or in the same way that rentcharge in lieu of ordinary tithe is recoverable (*p*). Jurisdiction.

No special procedure is prescribed for actions brought under the above provisions, and the action will therefore be by plaint and summons in the ordinary way (*q*), and the general practice of the court as to costs etc. will apply (*r*), and the proceedings be subject to the ordinary right of appeal (*s*). Procedure.

(*k*) Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 3 (1).

(*l*) *Ibid.*, s. 3 (2).

(*m*) *Ibid.*, s. 3 (3). The security above mentioned is to be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking. Any sum paid by a surety on behalf of a defendant, together with all costs incurred by such surety in respect of such security, is deemed to be a debt due to him from the defendant (*ibid.*).

Security may be given by an oral or written acknowledgment, in or under the direction of the court, of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given the court may order payment of any sum which may become due in pursuance of such security (*ibid.*, s. 8).

The above section gives power to the Lord Chancellor to make rules as to giving security under the Act, but no rules have been made thereunder. For form of undertaking and suretyship, see County Court Rules, Appendix, Form 432.

(*n*) Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 3.

(*o*) 49 & 50 Vict. c. 54. As to tithes generally, see title ECCLESIASTICAL LAW.

(*p*) Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), s. 4 (5). The jurisdiction hereunder is apparently unlimited as to amount. For the provisions as to the recovery of rentcharge in lieu of ordinary title, see pp. 690, 691, *post*.

(*q*) County Court Rules, Ord. 50, r 35.

(*r*) *Ibid.*, r. 36. As to costs, see pp. 578 *et seq.*, *ante*.

(*s*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s 120, and pp. 601 *et seq.*, *ante*.

SECT. 16. Factory and Workshop Act, 1901.

SECT. 16.—*Factory and Workshop Act*, 1901.

Jurisdiction.

1562. Under the Factory and Workshop Act, 1901 (*t*), the district council in which a factory or workshop is situated may, in the circumstances and in the cases mentioned in the Act, require the owner of such factory or workshop to provide proper means of escape in case of fire (*u*), and in such case the owner, if he alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirements of the council, may apply to the county court who, after hearing the occupier, may make such order as, under all the circumstances of the case, appears to the court just and equitable (*a*).

Procedure.

1563. The application is made by action commenced by plaint and summons in the ordinary way; particulars of demand must be filed stating concisely the relief or order which the plaintiff claims (*b*).

Costs and appeal.

1564. There being no special provision as to costs, the ordinary rules as to costs in actions apply (*c*). Neither the Act nor the rules make any provision as to appeal, and the ordinary rights of appeal in an action therefore attach to proceedings under the Act(*d*).

SECT. 17.—*Finance Act*, 1894.

Jurisdiction.

1565. The Finance Act, 1894 (*e*), makes provision for the assessment by the Commissioners of Inland Revenue of estate duty on real and personal property passing on the death of any person (*f*), and in cases where the value of such property as alleged by the Commissioners does not exceed £10,000 any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged, or otherwise, may appeal to the county court for the county or place in which the appellant resides or the property is situated (*g*).

Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined, upon the application by any person interested, where the amount in dispute is less than £50, by a county court for the county or place in which the person

(*t*) 1 Edw. 7, c. 22; see, generally, title FACTORIES AND WORKSHOPS.

(*u*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 14 (1), (2), (3).

(*a*) *Ibid.*, s. 14 (4). The effect of this provision is to exclude any contractual rights given to the landlord under the tenancy agreement, and the landlord's only remedy in respect of expenses incurred under the Act is by application to the county court under this provision (*Horner* v. *Franklin*, [1905] 1 K. B. 479, C. A.), but the county court judge, in determining what is "just and equitable," must take the terms of the tenancy agreement into consideration (*ibid.*).

(*b*) County Court Rules, Ord. 50, r. 34.

(*c*) See pp. 578 *et seq.*, *ante*.

(*d*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*e*) 57 & 58 Vict. c. 30. As to death duties generally, see title DEATH DUTIES.

(*f*) Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1—5.

(*g*) *Ibid.*, s. 10 (1), (5).

recovering the same resides or the property in respect of which the duty is paid is situated (*h*). This jurisdiction is concurrent with the High Court but limited as expressed above.

Procedure under s. 10 of the Finance Act, 1894.

1566. A person who desires to appeal to the court under the provisions of s. 10 of the Finance Act, 1894, must, within one month from the notification of the decision or claim of the Commissioners, deliver to the Commissioners a written statement of the grounds of his appeal; such statement must state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if it is contended that the value put by the Commissioners upon any property is excessive, the property must be therein described and identified, and the value which the appellant contends should be put upon it stated (*i*).

The Commissioners, within one month from the delivery to them of such statement, must notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same, either in whole or in part (*k*).

At any time not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim, the appellant may proceed with his appeal by filing a petition (*l*) intituled "In the matter of the Finance Act, 1894, and in the matter of the estate duty on the property passing on the death of , late of , deceased," and a copy thereof, with a notice of the day and hour on which the petition will be heard, must be served on the Commissioners (*m*).

Amendment of petition.

The judge may, at any time before or at the hearing, allow the appellant to amend his petition, upon such terms as the judge may think right (*n*), but except as so allowed the appellant must not in his petition state, or at the hearing be allowed to rely upon, any ground of appeal not specifically set forth in the statement of the grounds of appeal (*o*).

Evidence.

Unless by consent or otherwise ordered, only oral evidence is admitted at the hearing (*p*). The Crown has the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents (*q*).

An application for leave to bring an appeal without payment or on part payment only of the duty, under the provisions of s. 10 (4) of the Finance Act, 1894, must be made to the judge in accordance with the rules as to interlocutory applications by notice in writing and on affidavit, and the applicant must serve such notice on the

(*h*) Finance Act, 1894 (57 & 58 Vict. c. 30), s. 14 (2).
(*i*) County Court Rules, Ord. 42, r. 2.
(*k*) *Ibid.*, r. 3.
(*l*) *Ibid.*, r. 4.
(*m*) *Ibid.*, r. 5. Service must be effected in accordance with County Court Rules, Ord. 38, rr. 3, 4.
(*n*) County Court Rules, Ord. 42, r. 9.
(*o*) *Ibid.*, r. 6.
(*p*) *Ibid.*, r. 7.
(*q*) *Ibid.*, r. 8.

SECT. 17. Finance Act, 1894.

Commissioners three clear days at least before the hearing of the application, together with copies of any affidavits intended to be used on the hearing (*r*).

Order of judge.

Any order made by the judge upon a petition must be drawn up, sealed, and filed by the registrar (*s*).

Procedure under s. 14 of the Finance Act, 1894.

1567. Proceedings for the determination of a dispute as to the proportion of estate duty to be borne by any property or person under s. 14 of the Finance Act, 1894, must be brought by action commenced by plaint and summons in the ordinary way; the person claiming to recover the amount in dispute must be made plaintiff and the person resisting such payment defendant. Particulars of demand must be filed stating concisely the nature of the dispute and the relief or order which the plaintiff claims (*t*).

Costs and appeal.

1568. There are no special provisions as to costs, either in the Act or in the rules, and the general provisions as to costs will therefore apply. In proceedings brought under s. 10 a right of appeal to the Court of Appeal is expressly conferred (*a*); proceedings under s. 14 would appear to be subject to the ordinary right of appeal in an action (*b*).

SECT. 18.—*Fines and Recoveries Act*, 1833; *Married Women's Reversionary Interests Act*, 1857.

Jurisdiction.

1569. Under the Fines and Recoveries Act, 1833 (*c*), a deed to be executed by a married woman for the purposes of the Act is required to be acknowledged (*d*), as, under the Married Women's Reversionary Interests Act, 1857 (*e*), is also a deed executed for the purposes of that Act (*f*), and such last-mentioned acknowledgment is to be made in the manner prescribed in and by the Fines and Recoveries Act, 1833; and by the County Courts Act, 1888 (*g*), acknowledgments under the Fines and Recoveries Act, 1833, may now be received by a judge of county courts (*h*).

Procedure.

1570. The procedure is the same as on making an acknowledgment before a judge of the High Court (*i*).

(*r*) County Court Rules, Ord. 42, r. 10. For the rules as to interlocutory applications generally, see County Court Rules, Ord. 12, r. 11; and p. 507, *ante*.

(*s*) County Court Rules, Ord. 42, r. 11.

(*t*) *Ibid.*, r. 12.

(*a*) Finance Act, 1896 (59 & 60 Vict. c. 28), s. 22.

(*b*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*c*) 3 & 4 Will. 4, c. 74; see, generally, title HUSBAND AND WIFE.

(*d*) *Ibid.*, s. 79.

(*e*) 20 & 21 Vict. c. 57.

(*f*) *Ibid.*, s. 2.

(*g*) 51 & 52 Vict. c. 43.

(*h*) *Ibid.*, s. 184.

(*i*) *Ibid.*, s. 184. For the procedure in the High Court see Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 7, and the rules of 1882 made thereunder, as to which, see title HUSBAND AND WIFE.

SECT. 19.—*Friendly Societies Act*, 1896.

1571. Under the Friendly Societies Act, 1896 (*k*), exclusive jurisdiction is conferred on the county court in respect of the following matters:—

Recovery of money.

(1) All sums of money payable by a member to a society or branch as defined by the Act is recoverable in the county court of the district in which the member resides as a debt due from the member to the society or branch (*l*).

Neglect of officer to account etc.

(2) Every officer of a registered society or branch having receipt or charge of money must, if the rules so require, give security, either by bond or otherwise, for the due performance of his duties (*m*), and every such officer must upon proper demand give in his account to the society or branch and pay over all sums of money and deliver all property in his hands or custody to such persons as the society or branch or the committee or trustees thereof appoint (*n*); and in case of neglect or refusal to deliver such account or to pay and deliver such money and property, the society or branch may sue upon the bond or security of such officer or may apply to the county court, whose order is final and conclusive (*o*).

Disputes

(3) Under the Act disputes (*p*) must be decided in the manner directed by the rules of the society or branch, and the decision so given is binding and conclusive on all parties without appeal, but application for the enforcement thereof may be made to the county court (*a*).

(4) Where the rules of a registered society or branch direct that disputes (*b*) shall be referred to justices, the dispute must be determined by a court of summary jurisdiction, or if, the parties consent, by the county court (*c*).

(5) Where the rules contain no direction as to disputes (*d*), or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules,

(*k*) 59 & 60 Vict. c. 25. This Act and the Collecting Societies and Industrial Assurance Companies Act, 1896 (59 & 60 Vict. c. 26 (see p. 643, *ante*), together consolidate and reproduce the provisions of the Friendly Societies Acts, 1875 to 1895, which Acts are thereby repealed. As to friendly societies generally, see title FRIENDLY SOCIETIES.

(*l*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 31 (2). "Society or branch," for the purpose of the above provisions, means "a registered cattle insurance society or branch, and such specially authorised societies or branches thereof as the Treasury may allow to take the benefit of this section" (*ibid.*, s. 31 (1)).

(*m*) *Ibid.*, s. 54.

(*n*) *Ibid.*, s. 55 (1).

(*o*) *Ibid.*, s. 55 (2). It is to be noticed that, whereas application must be made to the county court, the right to sue is not expressly limited to suing in the county court, and in cases where the amount is above the limit of the ordinary county court jurisdiction it would seem that the action should be brought in the High Court.

(*p*) For the definition of disputes, see *ibid.*, s. 68 (1), (8), as amended by the Friendly Societies Act, 1908 (8 Edw. 7, c. 32), s. 6.

(*a*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68 (1).

(*b*) See note (*p*), *supra*.

(*c*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68 (5).

(*d*) See note (*p*), *supra*.

SECT. 19. Friendly Societies Act, 1896.

the member or person aggrieved may apply to the county court, who may hear and determine the matter in dispute (*e*).

Amalgamation.

(6) Where a registered society or branch has amalgamated or transferred its engagements or has terminated or been dissolved, any member or person dissatisfied with the provisions made for satisfying his claim, may apply to the county court of the district within which any place of business of the society is situated for relief or other order, and such court has the same power in the matter as in regard to the settlement of disputes under the Act (*f*).

Procedure.

1572. In actions to recover sums of money payable by a member of a society or a branch, no special procedure having been prescribed, the general rules as to procedure in an action will apply (*g*).

The procedure on an application against an officer upon his refusal to account or to pay over and deliver the money and property of a society, on an application to enforce a decision on a dispute and upon the reference of a dispute to the court, is the same as in the like proceedings under the Building Societies Act, 1874 (*h*).

An application for relief is made by action commenced by plaint and summons in the ordinary way, and particulars of demand must be filed with such application (*i*).

Before commencing proceedings to set aside the dissolution of a society or branch the person desirous of taking such proceedings must give notice thereof to the central office not less than seven days before the proceeding is commenced (*k*).

Stating a case for opinion of High Court.

1573. The court to whom a dispute is referred under the rules of a registered society or branch is not compelled to state a special case upon any question of law arising in the case, but may, at the request of either party, state such a case for the opinion of the Supreme Court, and may grant to either party such discovery as to documents and otherwise, or such inspection of documents as might be granted by any court of law or equity, which discovery must be made on behalf of the society or branch by such officer thereof as the court may determine (*l*).

Costs.

1574. The proceedings in every case being by action, and no special provisions having been made as to costs, the ordinary rules as to costs in an action will apply (*m*).

(*e*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68 (6). In the case of a society with branches the forty days do not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, but so, however, that no rules shall require a greater delay than three months between each successive determination (*ibid.*).

(*f*) *Ibid.*, ss. 70 (7), 78 (2). As to the powers referred to, see p. 651, *ante*.

(*g*) See County Court Rules, Ord. 50, rr. 35, 36.

(*h*) See County Court Rules, Ord. 41, rr. 1—4, 6—10; and pp. 637 *et seq.*, *ante*.

(*i*) County Court Rules, Ord. 41, rr. 5—11. The society or branch may be sued in its own name or in the names of such persons as are by the Act authorised to be sued on its behalf (*ibid.*). As to the persons authorised to sue, see Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 94.

(*k*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 83 (1).

(*l*) *Ibid.*, s. 68 (7).

(*m*) See pp. 578 *et seq.*, *ante*.

SECT. 19. Friendly Societies Act, 1896.

1575. The decision of the court on an application against an officer for failing to account or pay or hand over the money and property of the society is final and conclusive (*n*), the other proceedings would seem to be subject to the ordinary right of appeal in an action (*o*).

SECT. 20.—*Government Annuities Acts*, 1864 *and* 1882.

Government Annuities Act, 1864.

1576. By the Government Annuities Act, 1864 (*p*), if the National Debt Commissioners refuse payment due on death on a contract made under the Act, the person beneficially interested therein may, instead of proceeding to arbitration in the manner provided by the Savings Bank Acts, take proceedings against the said Commissioners for the recovery of the amount due in the county court of the district in which the contract was entered into, or, with the consent of the said Commissioners, in the county court of the district in which the claimant is residing, and the decision of such county court is final and binding upon all parties and without any appeal (*q*). The jurisdiction conferred by the above provision is conferred exclusively on the county court, and is unlimited as to amount. No special procedure is prescribed, and the proceedings are therefore by action commenced by plaint and summons in the ordinary way (*r*), and the ordinary rules of practice and procedure apply (*s*).

Government Annuities Act, 1882.

1577. Under the Government Annuities Act, 1882 (*t*), a person who receives any payment in respect of a savings bank annuity after the death of the person at whose death such annuity is to cease, or who receives the amount of any Government insurance before the death of the person on whose death it is payable, is liable to pay to the National Debt Commissioners double the amount of the sum received, together with interest thereon at the rate of 5 per cent. per annum from the date of the receipt; and such sum may be recovered in a county court or any other competent court as a debt due to His Majesty (*a*). The jurisdiction conferred on the county court hereunder appears, having regard to the terms of the section, to be unlimited as to amount.

Procedure.

1578. No special procedure is prescribed for claims brought under the above provision, and the proceedings must therefore be by action commenced by plaint and summons in the ordinary way (*b*), and the ordinary rules of practice and procedure apply (*c*).

Appeal.

1579. There are no special provisions as to appeal, and the right of appeal is therefore the same as in any other action (*d*).

(*n*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 55 (2).
(*o*) See pp. 601 *et seq.*, *ante*; *Wilkinson* v. *Jagger* (1887), 36 W. R. 169.
(*p*) 27 & 28 Vict. c. 43. As to Government annuities, see title REVENUE.
(*q*) Government Annuities Act, 1864 (27 & 28 Vict. c. 43), s. 10.
(*r*) County Court Rules, Ord. 50, r. 35.
(*s*) *Ibid.*, r. 36.
(*t*) 45 & 46 Vict. c. 51.
(*a*) *Ibid.*, s. 12 (1).
(*b*) County Court Rules, Ord. 50, r. 35.
(*c*) *Ibid.*, r. 36.
(*d*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

SECT. 21. Guardianship of Infants Act, 1886.

SECT. 21.—*Guardianship of Infants Act*, 1886.

Jurisdiction.

1580. Under the Guardianship of Infants Act, 1886 (*e*), power is given to "the court" in the following respects:—(1) To appoint a guardian or guardians to act jointly with the mother, where no guardian has been appointed by the father or the guardians appointed are dead or refuse to act (*f*); (2) to confirm the appointment of a guardian, nominated by a deceased mother, to act jointly with the father (*g*); (3) to give directions as to matters affecting the welfare of an infant upon which guardians are unable to agree (*h*); (4) to make orders as to the custody of and right of access to infants (*i*).

"Court" in the above Act is defined as meaning the High Court or the county court of the district in which the respondent or respondents or any of them reside (*k*), and the county court has therefore concurrent and unlimited jurisdiction with the High Court.

Removal into High Court.

1581. Where an application has been made to the county court the High Court must, at the instance of any party to such application, and on such terms as to costs as the court may think proper, order the matter to be removed into the High Court and there proceeded with before a judge of the Chancery Division (*l*).

Procedure and costs.

1582. Any application under the Act must be made by petition (*m*) and a petition for the appointment of a guardian of an infant must show the age of the infant, the nature and amount of the infant's fortune and income, and what relations the infant has (*n*),

The same procedure is to be followed and the same costs allowed as on any other petition to the court, regard being had (for the purpose of determining the scale of costs) to the amount of the property of the infant (*o*). The rules provide who may be petitioners in the various cases named in the Act, and what persons must be made respondents and on whom the petition must be served (*p*).

Appeal.

1583. An appeal lies to the High Court from any order made under the Act by a county court, the appeal being to a judge of the Chancery Division (*q*).

(*e*) 49 & 50 Vict. c. 27; see, generally, title INFANTS AND CHILDREN.
(*f*) Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 2.
(*g*) *Ibid.*, s. 3 (1), (2).
(*h*) *Ibid.*, s. 3 (3).
(*i*) *Ibid.*, s. 5.
(*k*) *Ibid.*, s. 9.
(*l*) *Ibid.*, s. 10. The procedure on such an application is prescribed by R. S. C., Guardianship of Infants (December 1, 1887), r. 8.
(*m*) County Court Rules, Ord. 47, r. 1.
(*n*) *Ibid.*, r. 9.
(*o*) *Ibid.*, r. 10.
(*p*) *Ibid.*, rr. 4—8.
(*q*) Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 10. It is provided by R. S. C., Guardianship of Infants (December 17, 1887), that all matters relating to appeals from county courts are to be disposed of in court or in chambers by or under the directions of any judge of the Chancery Division named for that purpose by the Lord Chancellor.

SECT. 22.—*Highways and Locomotives (Amendment) Act*, 1878.

SECT. 22. Highways and Locomotives (Amendment) Act, 1878.

1584. By the Highways and Locomotives (Amendment) Act, 1878 (*r*), provision is made for the recovery by a road authority of expenses of extraordinary traffic in a summary manner before justices (*s*). By the Locomotives Act, 1898 (*t*), this jurisdiction was transferred from the justices to the county court, as to claims not exceeding £250, and to the High Court as to claims exceeding that sum (*a*). Jurisdiction.

Proceedings must be commenced within twelve months of the time at which the damage has been done, or, where the damage is consequent on any particular building contract or work extending over a long period, not later than six months after the completion of such contract or work (*b*).

1585. No special procedure is prescribed, and the proceedings are therefore by action commenced by plaint and summons in the ordinary way (*c*), and the general rules of practice and procedure apply (*d*). Procedure.

There are no specific provisions as to appeal, and the right of appeal will therefore be the same as in any other ordinary action (*e*). Appeal.

SECT. 23.—*Hosiery Manufacture (Wages) Act*, 1874.

1586. Under the Hosiery Manufacture (Wages) Act, 1874 (*f*), penalties are imposed on employers bargaining for illegal deductions (*g*), and upon workmen improperly using frames or machines (*h*), and such penalties are recoverable, with full costs of suit, in the county court of the district in which the offence is commtted (*i*). Jurisdiction.

1587. No special procedure is prescribed, and the proceedings are therefore by action commenced by plaint and summons in the ordinary way (*k*), and the ordinary rules of practice and procedure apply (*l*). Procedure.

1588. An appeal lies in the ordinary way, although no right of appeal is expressly conferred by the Act (*m*). Appeal.

(*r*) 41 & 42 Vict. c. 77; see, generally, title HIGHWAYS, STREETS AND BRIDGES.
(*s*) Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.
(*t*) 61 & 62 Vict. c. 29.
(*a*) *Ibid.*, s. 12 (1) (a).
(*b*) *Ibid.*, s. 12 (1) (b).
(*c*) County Court Rules, Ord. 50, r. 35.
(*d*) *Ibid.*, r. 36.
(*e*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.
(*f*) 37 & 38 Vict. c. 48; see, generally, title MASTER AND SERVANT.
(*g*) Hosiery Manufacture (Wages) Act, 1874 (37 & 38 Vict. c. 48), s. 3.
(*h*) *Ibid.*, s. 4.
(*i*) *Ibid.*, ss. 3, 4.
(*k*) County Court Rules, Ord. 50, r. 35.
(*l*) *Ibid.*, r. 36.
(*m*) *Willis* v. *Thorp* (1875), L. R. 10 Q. B. 383. As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

SECT. 24. Housing of the Working Classes Acts, 1890 and 1903.

SECT. 24.—*Housing of the Working Classes Acts*, 1890 *and* 1903.

Jurisdiction.

1589. Under the Housing of the Working Classes Act, 1890 (*n*), an order may be made in the manner therein provided for the closing of a dwelling-house unfit for human habitation (*o*), and by the Housing of the Working Classes Act, 1903 (*p*), jurisdiction is conferred on county courts to enforce such orders by means of an order for possession under the provisions of the County Courts Act, 1888 (*q*), as if the owner or local authority were the landlord of the dwelling-house (*r*).

Any expenses incurred by a local authority in obtaining possession of the premises may be recovered from the owner of the premises as a civil debt in the manner provided by the Summary Jurisdiction Acts (*s*).

Procedure.

1590. The procedure is the same as in any ordinary action for possession (*t*), the proceedings being commenced by plaint and summons in the ordinary way (*a*).

Appeal.

1591. If the yearly rent or value of the premises exceeds £20 appeal lies as of right; in other cases only by leave of the judge (*b*).

SECT. 25.—*Inclosure etc. Expenses Act*, 1868.

Jurisdiction.

1592. Under the Inclosure etc. Expenses Act, 1868 (*c*), the county court is given exclusive jurisdiction in the following matters:—

Order to pay costs.

(1) Where a dispute as to the expenses incidental to an enfranchisement, or as to the compensation to be paid to the steward, is referred to the Board of Agriculture and Fisheries for their certificate, the costs incurred by them in ascertaining the same must be paid to the commissioners either by such of the persons making such reference or applying for such certificate, or whose costs are so taxed, as the Board by order may direct; the order must state the amount of the costs and is conclusive evidence of the debt, and the commissioners may recover the same from the persons liable by application to any county court, together with all costs of such application (*d*).

Production of documents.

(2) Power is conferred on the Board by an order to require the production of all documents relating to an inclosure authorised by Parliament, and in default of such production the commissioners may apply to the judge of the county court in which the inclosure or any part thereof is situate to enforce such order, and such judge

(*n*) 53 & 54 Vict. c. 70; see title PUBLIC HEALTH ETC.
(*o*) Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 32 (3).
(*p*) 3 Edw. 7, c. 39.
(*q*) 51 & 52 Vict. c. 43, ss. 138—145; see pp. 435 *et seq.*, *ante*.
(*r*) 3 Edw. 7, c. 39, s. 10.
(*s*) *Ibid.*, s. 10. As to these Acts, see title MAGISTRATES.
(*t*) Housing of the Working Classes Act, 1903 (3 Edw. 7. c. 39), s. 10. For the provisions as to service, appearance, costs etc. in actions for possession, see pp. 435 *et seq.*, *ante*.
(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 138, 139.
(*b*) *Ibid.*, s. 120; and see pp. 601 *et seq.*, *ante*.
(*c*) 31 & 32 Vict. c. 89; see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 588.
(*d*) Inclosure, etc. Expenses Act, 1868 (31 & 32 Vict. c. 89), s. 3.

SECT. 25. Inclosure etc. Expenses Act, 1868.

must, upon the production of the order of the Board, give at the expense of the person in default such direction as he is enabled to give to compel the production of papers and documents before such court (*e*).

Failure to comply with such an order of the judge renders the person in default liable to attachment (*f*).

Procedure.

1593. An application under either of the above provisions must be made by action commenced by plaint and summons in the ordinary way; particulars of demand must be filed with the application stating concisely the relief or order which the plaintiff claims (*g*).

Costs.

1594. In actions under s. 4 the costs may be taxed on any scale which the judge may direct, and in default of such direction are to be taxed under scale B (*h*).

Appeal.

1595. There are no express provisions, either in the Acts or in the County Court Rules; as to appeal, and the ordinary right of appeal in an action therefore attaches to applications made under the above provisions (*i*).

SECT. 26.—*Industrial and Provident Societies Act*, 1893.

Jurisdiction.

1596. By the Industrial and Provident Societies Act, 1893 (*k*), exclusive jurisdiction is conferred on the county court in matters relating to the societies dealt with by the Act in the following respects:—

Recovery of money.

(1) All moneys payable by a member to a registered society is recoverable as a debt due from such member to the society, either in the county court of the district in which the registered office of the society is situated or, at the option of the society, of the district in which such member resides (*l*).

Neglect of officer to account etc.

(2) An officer of a registered society having the receipt or charge of money must, if the rules of the society require, enter into a bond or give security to properly account for and pay over the

(*e*) 31 & 32 Vict. c. 89, s. 4.

(*f*) County Court Rules, Ord. 50, r. 3.

(*g*) *Ibid.*, r. 1. It is to be noted that an application under Inclosure etc. Expenses Act, 1868 (31 & 32 Vict. c. 89), s. 3, may be made "to any county court," whereas an application under *ibid.*, s. 4, must be made to the court in which the lands are situate; having regard, however, to the fact that the application must be made by plaint and summons in the ordinary way, it will be safer in applications under *ibid.*, s. 3, to follow the usual rule as to venue in an action and to make the application in the court of the district in which the defendant dwells or carries on business.

(*h*) County Court Rules, Ord. 50, r. 2.

(*i*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*k*) 56 & 57 Vict. c. 39. As to these societies generally, see title INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.

(*l*) Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 231. A debt due from a member can be recovered in the county court under this section, even where the amount of the debt is in excess of the ordinary jurisdiction of the court, and also where, at the time of bringing the action, the member has ceased to be a member of the society (*Gwendolen Freehold Land Society* v. *Wicks*, [1904] 2 K. B. 622).

SECT. 26. Industrial and Provident Societies Act, 1893.

moneys received by him (*m*); and in case such officer, or his executor or administrator, neglects or refuses to account or to pay over and deliver the property of the society for the time being in his hands or custody, the society may sue upon the said bond or security, or may apply to the county court (which may proceed in a summary manner), whose order is final and conclusive (*n*).

Disputes.

(3) Disputes between a member, or a person claiming through such member, and the society or an officer thereof must be decided in the manner (if any) directed by the rules of the society, and such decision is binding and conclusive on all parties without appeal, and application for the enforcement of such decision may be made to the county court (*o*), provided that where the rules of the society direct that disputes shall be referred to justices, the parties thereto may enter into a consent referring such dispute to the county court, which court may hear and determine the matter in dispute (*p*). Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the county court or to a court of summary jurisdiction, which court may hear and determine the matter in dispute (*q*).

Termination of society.

(4) Where a society is terminated by an instrument of dissolution (*r*) the registrar must cause a notice of the dissolution to be advertised in the *Gazette* and some local newspaper, and within three months from the date of such *Gazette* notice a member or other person interested in or having any claim on the funds of the society may commence proceedings in the county court of the district where the registered office of the society is situated to set aside such dissolution (*s*).

Procedure.

1597. No special procedure is prescribed for actions under s. 23 of the Act to recover money payable by a member, and the ordinary procedure in an action will therefore apply.

An application to the court under s. 48 of the Act against an officer of the society, a reference of a dispute to the court, an application for the enforcement of a decision on a dispute, and proceedings to set aside the dissolution of a society, are all commenced by plaint and summons in the ordinary way (*t*), and particulars of demand must be filed in each case stating concisely the relief or order which the plaintiff claims, and, in the case of disputes, the nature of the dispute referred, and if such is the case

(*m*) Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 47.
(*n*) *Ibid.*, s. 48.
(*o*) *Ibid.*, s. 49 (1). "Disputes" means "every dispute between a member of a registered society, or any person aggrieved who has for not more than six months ceased to be a member of a registered society, or any person claiming through such member or person aggrieved, or claiming under the rules of a registered society, and the society or an officer thereof" (*ibid.*).
(*p*) *Ibid.*, s. 49 (4).
(*q*) *Ibid.*, s. 49 (5).
(*r*) As to dissolution in this manner, see *ibid.*, s. 58 (b).
(*s*) *Ibid.*, s. 61 (e).
(*t*) County Court Rules, Ord. 41, rr. 1, 4, 7, 11.

the nature of the thing desired to be done or the neglect complained of, and if property is required to be delivered up a description of such property (*a*).

SECT. 26. Industrial and Provident Societies Act, 1893.

1598. The rules provide that a society may sue or be sued either in its own name or in the names of such persons as are authorised by the Act to be sued on behalf of the society (*b*); as, however, no such persons are authorised by the Act, proceedings must always be taken in the registered name of the society.

Parties.

Where a dispute is referred to the court the claiming or aggrieved member (or other person) must be made plaintiff and the society defendant (*c*).

In applications for the enforcement of a decision on a dispute the person entitled to, or claiming to be entitled to, the benefit of such decision must be made plaintiff and the person against whom such decision is given defendant (*d*); in applications against an officer of a society, the society must be made plaintiffs and such officer defendant (*e*); in proceedings to set aside a dissolution the person seeking to set aside must be made plaintiff and the society defendants (*f*).

1599. Neither the Act nor the County Court Rules make any special provisions as to costs, and the ordinary rules as to costs in an action would therefore seem to apply (*g*), but it is difficult to say how in some of the cases above mentioned the scale of costs is to be determined.

Costs.

1600. There being neither in the Act nor in the County Court Rules any special provisions as to appeal, the ordinary right of appeal in an action will apply to proceedings brought under the above provisions (*h*).

Appeal.

SECT. 27.—*Inebriates Acts*, 1879 *to* 1899.

1601. With regard to certain matters connected with the carrying out of certain provisions of the Inebriates Acts, 1879 to 1899 (*i*), jurisdiction has been conferred on the county court as follows:—

Jurisdiction.

(1) Under the Habitual Drunkards Act, 1879 (*k*), a judge of the High Court of Justice, or a county court judge within whose district the retreat (*l*) is situated, may at any time, by order under his hand,

Habitual Drunkards Act, 1879.

(*a*) County Court Rules, Ord. 41, rr. 3, 4, 8—11.
(*b*) *Ibid.*, rr. 2, 5, 7, 11.
(*c*) *Ibid.*, r. 2.
(*d*) *Ibid.*, r. 4.
(*e*) *Ibid.*, r. 7.
(*f*) *Ibid.*, r. 11.
(*g*) This follows from the fact that the proceedings are by action; and see County Court Rules, Ord. 50, r. 36.
(*h*) See County Court Rules, Ord. 50, r. 36; and as to appeal generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.
(*i*) 42 & 43 Vict. c. 19; 51 & 52 Vict. c. 19; 61 & 62 Vict. c. 60; 62 & 63 Vict. c. 35, which make provisions for the detention of and otherwise dealing with habitual drunkards; see, generally, title INTOXICATING LIQUORS.
(*k*) 42 & 43 Vict. c. 19.
(*l*) *Ibid.*, s. 3, defines a retreat as "a house licensed by the licensing authority

SECT. 27. Inebriates Acts, 1879 to 1899.

authorise and direct any person or persons to visit and examine a person detained in a retreat under the Act and to inquire into and report on any matters in relation to the person so detained, and on receiving such report the judge may, if he think fit, order the discharge of the person so detained (*m*).

Procedure.

1602. An application under the above provision for an order to visit and examine a person detained in a retreat must be made in accordance with the rules of the county court as to interlocutory applications. The application must be supported by affidavit and intituled in the matter of the Act and of the person detained (*n*).

Costs.

No special provision is made as to costs, but, under the rules as to interlocutory applications under which the application is made, the allowance of costs is in the discretion of the judge or registrar (*o*).

Inebriates Act, 1898.

(2) Under the Inebriates Act, 1898 (*p*), where it is made to appear that a person detained in a State or certified inebriate reformatory has any real or personal property more than sufficient to maintain his family, a county court judge may make an order for the payment of the expenses incurred in relation to the detention of the person detained, which order may be enforced against the property of such person in the same way as a judgment of the county court (*q*).

Procedure and costs.

1603. An application under the above provision for an order for the payment of the expenses incurred in relation to the detention of an inebriate must be made by petition, and the same procedure is to be followed and the same costs allowed as on a petition under Ord. 38 of the County Court Rules (*r*).

Appeal.

1604. The jurisdiction conferred by s. 18 of the Inebriates Act, 1879, to make an order to visit a person detained is discretionary, and therefore no right of appeal exists in respect of applications made under that section; applications made under s. 12 of the Inebriates Act, 1898, are, there being no provision or rule to the contrary, subject to the ordinary rights of appeal (*s*).

SECT. 28.—*Judicial Trustees Act*, 1896.

Jurisdiction.

1605. Under the Judicial Trustees Act, 1896 (*t*), the court, upon the application by or on behalf of a person creating or intending to

. . . . for the reception, control, care and curative treatment of habitual drunkards."

(*m*) Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), s. 18.

(*n*) County Court Rules, Ord. 50, r. 12; as to the rules relating to interlocutory applications generally, see County Court Rules, Ord. 12, r. 11; and p. 507, *ante*.

(*o*) County Court Rules, Ord. 12, r. 11 (4).

(*p*) 61 & 62 Vict. c. 60.

(*q*) *Ibid.*, s. 12 (1); for the definition of "expenses," see *ibid.*, s. 27.

(*r*) County Court Rules, Ord. 50, r. 13; for the provisions of County Court Rules, Ord. 38, see p. 481, *ante*. Ord. 38 makes no provision as to costs, and the costs in matters coming within that order appear to be regulated by County Court Rules, Ord. 53, r. 12.

(*s*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*t*) 59 & 60 Vict, c. 35; as to this Act, see, generally, title TRUSTS AND TRUSTEES.

SECT. 28. Judicial Trustees Act, 1896.

create a trust, or a trustee or a beneficiary, may appoint a judicial trustee to be a trustee either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees (*a*).

The jurisdiction of the court under the Act may be exercised by the High Court and by any county court judge to whom such jurisdiction is assigned under the Act (*b*).

Procedure.

1606. The procedure and the mode of carrying out the duties of the trustee are prescribed by elaborate rules made under the Act (*c*), under which the jurisdiction of the county court judge extends to any trust in which the trust property does not exceed £500 in value, but such jurisdiction can only be exercised in a metropolitan county court (*d*) or a county court for the time being having bankruptcy jurisdiction (*e*).

The proceedings in the county court are by petition (*f*).

SECT. 29.—*Law of Distress Amendment Acts*, 1888 *and* 1895.

Jurisdiction.

1607. Under the Law of Distress Amendment Act, 1888 (*g*), as amended by the Law of Distress Amendment Act, 1895 (*h*), no person may act as a bailiff to levy a distress for rent, except a person authorised by a certificate in writing under the hand of a county court judge or registrar (*i*), which certificate may be either special, *i.e.*, for a particular distress or distresses, or general (*k*).

Under the Act power is given to the Lord Chancellor to make rules for carrying the Act into effect (*l*), and the powers conferred by the Act are limited and controlled by the rules which have been made under this provision (*m*).

A special certificate may be granted by the judge or registrar, but a general certificate can only be granted by the judge in person (*n*). No certificate can be granted to an officer of a county

(*a*) Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 1.
(*b*) *Ibid.*, s. 2.
(*c*) *Ibid.*, s. 4; Judicial Trustee Rules, 1897, made August 31, 1897; Statutory Rules and Orders Revised, Vol. XII., p. 911.
(*d*) "Metropolitan county court" means any of the county courts mentioned in the Third Schedule of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) (Judicial Trustee Rules, 1897, r. 31 (5)); see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 47.
(*e*) Judicial Trustee Rules, 1897, r. 31 (1). As to county courts exercising bankruptcy jurisdiction, see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 7. Where a district of any county court (other than a metropolitan county court), or any part of such a district, is attached for the purpose of bankruptcy jurisdiction to some court other than the court of the district, that district or part is for the purpose of the Act and rules deemed to be attached to the same court (Judicial Trustee Rules, 1897, r. 31 (2)).
(*f*) *Ibid.*, r. 31 (4).
(*g*) 51 & 52 Vict. c. 21.
(*h*) 58 & 59 Vict. c. 24.
(*i*) Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 7; see, generally, title DISTRESS.
(*k*) *Ibid.*, s. 7 (2); for forms of such certificates, see Distress for Rent Rules, 1888, Forms 1 and 2.
(*l*) Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 8.
(*m*) Distress for Rent Rules, 1888 (August 21, 1888); Distress for Rent Rules, 1895 (November 29, 1895, and March 26, 1896).
(*n*) Distress for Rent Rules, 1888, r. 3.

SECT. 29. Law of Distress Amendment Acts, 1888 and 1895.

court (*o*), but, with this exception, a certificate may be granted to any person who satisfies the judge or registrar that he is a fit and proper person to hold the certificate (*p*).

Solicitors of the Supreme Court are entitled as of right to a special or general certificate (*q*). An applicant who is not rated as a ratepayer on a value of at least £25 a year may be required to give security (*r*) to the amount of £20 in the case of a general certificate, and £5 in the case of a special certificate (*a*), which security must be given to the registrar by deposit, bond, or guarantee, as he may require (*b*).

All applicants for general certificates must satisfy the judge that they reside in, or have their principal place of business in, the district of the court (*c*).

Forfeiture of security.

On an application to the judge to cancel a certificate for misconduct the judge may, whether he cancel the certificate or not, order the security, or part thereof, to be forfeited and may direct that the amount forfeited be paid to the party aggrieved (*d*), and in such a case, where the certificate is not cancelled, the bailiff may be ordered to give fresh security as a condition of retaining his certificate (*e*).

Procedure.

1608. No special procedure is prescribed for applications under the Act; in practice an application for a certificate is usually made to the judge in court by the applicant personally; an application to cancel a certificate should be made on notice in accordance with the rules as to interlocutory applications (*f*).

SECT. 30.—*Licensing Act*, 1904.

SUB-SECT. 1.—*Jurisdiction*

Division of compensation.

1609. Under the Licensing Act, 1904 (*g*), and the Licensing Rules, 1904 (*h*), jurisdiction has been conferred on the county court with respect to the following matters:—(1) If on the division of the amount to be paid as compensation on non-renewal of a licence any question arises which quarter sessions consider can be more conveniently determined by the county court, they may refer the question to the county court (*i*); (2) where a compensation authority makes default for a period of one month in paying an amount of not less than £50 (whether in one or separate sums) for the time being due in respect of any loan raised under the Act, the persons

Appointment of receiver.

(*o*) Distress for Rent Rules, 1888, r. 6.
(*p*) *Ibid.*, r. 8.
(*q*) *Ibid.*, r. 7.
(*r*) *Ibid.*, r. 9.
(*a*) *Ibid.*, r. 10.
(*b*) *Ibid.*, r. 11.
(*c*) Distress for Rent Rules, 1895, r. 1.
(*d*) Distress for Rent Rules, 1888, r. 12.
(*e*) *Ibid.*, r. 13.
(*f*) For the practice as to interlocutory applications generally, see County Court Rules, Ord. 12, r. 11; and p. 507, *ante*.
(*g*) 4 Edw. 7, c. 23; and see, generally, title INTOXICATING LIQUORS.
(*h*) Made in pursuance of Licensing Act, 1904 (4 Edw. 7, c. 23), s. 6.
(*i*) *Ibid.*, s. 2 (3).

entitled to the said amounts may (without prejudice to any other remedy) apply to the county court for the appointment of a receiver to such fund (*k*).

SUB-SECT. 2.—*Procedure in References from Quarter Sessions.*

Reference to quarter sessions.

1610. Where any question is referred by quarter sessions to a county court the reference is to the court in the district of which the licensed premises are situate (*l*).

The reference must be in the form of an order of the compensation authority, and must state concisely the question referred and the circumstances in which the question arises and any facts found by that authority in relation thereto, and must be authenticated in accordance with the Licensing Rules, 1904 (*m*).

The judge may at any time send the order of reference back to the compensation authority for further information, or for further explanation of the nature of the question intended to be referred (*n*).

Parties.

1611. A person who has been determined to be interested, or, where the compensation authority has not determined who are the persons so interested, a person claiming to be interested in the determination of the question referred, may, on filing an authenticated copy of the order of reference, file a petition, which petition must be intituled in the matter of the Licensing Act, 1904, and of the licensed premises (*o*).

All persons who have been determined to be interested, or, where the compensation authority has not determined who are the persons interested, all persons known to be claiming to be interested, must be named as respondents (*p*).

Hearing.

1612. The registrar must fix the day of hearing before the judge for any court appointed to be held within twenty-eight days from

(*k*) Licensing Rules, 1904, r. 71,

(*l*) County Court Rules, Ord. 50, r. 38.

(*m*) *Ibid.*, r. 39. As to authentication of documents, it is provided by Licensing Rules, 1904, r. 54, that, "except where special provision is made in pursuance of any Act or under these rules, any document shall, for the purposes of the Act, be sufficiently authenticated on behalf of quarter sessions, or the justices of a licensing district, or any committee acting under the Act, if purporting to be signed by their clerk."

(*n*) County Court Rules, Ord. 50, r. 40.

(*o*) *Ibid.*, r. 41. The petition must state concisely the circumstances in which the petitioner's claim arises, the relief or order which he claims, and pray for the direction of the court with reference to the question and the rights of all persons interested. It may refer to and adopt (without setting out) any facts or circumstances stated in the order of reference, and may state any fact or circumstance omitted therefrom, but not any fact or circumstance inconsistent therewith (*ibid.*, r. 41).

The petition must be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made, and such affidavit may refer to and set out the same matters as may be set out in the petition (*ibid.*).

The petitioner must deliver to the registrar with the petition and affidavit copies thereof for the use of the judge and copies for each respondent to be served (*ibid.*, r. 43).

(*p*) *Ibid.*, r. 42.

SECT. 30. Licensing Act, 1904.

the date of the filing of the petition, but so as to allow ten clear days for service (*a*).

The hearing must be held at the place at which the court is held, or by order of the judge at any other convenient court of which he is judge (*b*).

Upon the day of hearing being fixed the registrar must give notice thereof to the petitioner and issue copies thereof, and sealed copies of the petition and affidavit, for service on the respondents (*c*).

Service of notices etc.

The copies and notices mentioned above must be served on each respondent ten clear days at least before the return day (*d*).

Order of court.

1613. The court may not make any order inconsistent with any determination or order of the compensation authority, but if it appears to the court that any person, who has not made a claim before the compensation authority, is interested the court may send the order of reference back to the compensation authority with a report to that effect, in order that the compensation authority may take such further action in the matter as it may think fit (*e*).

SUB-SECT. 3.—*Procedure on Application to appoint a Receiver.*

Appointment of receiver.

1614. An application to appoint a receiver, where a compensation authority is in default, is made to the court of the district in which the office of the treasurer of the compensation authority is situated (*f*).

The application must be made by petition, and the same procedure is to be followed and the same costs allowed as on any other petition to the court in which the subject-matter of the petition amounts to or, as the case may be, exceeds £50 (*g*).

Costs.

1615. The costs of and incidental to a petition filed in connection with a reference by quarter sessions are in the discretion of the judge, who may order them to be paid out of the compensation

(*a*) County Court Rules, Ord. 50, r. 44. If no such court is available the registrar must send notice of the petition to the judge, who must appoint a time and place for hearing, but so as to allow ten clear days for service (*ibid.*, r. 45).

(*b*) *Ibid.*, r. 45.

(*c*) *Ibid.*, r. 46; and see County Court Rules, Appendix, Form 341.

(*d*) County Court Rules, Ord. 50, r. 47. Service may be effected (1) by a bailiff of a court, or, at the request of the petitioner, (2) by the petitioner or some clerk or servant in his permanent and exclusive employ; or (3) by the petitioner's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them. Service may be effected in accordance with the rules as to service of a default summons, or by sending the copy and notice by registered post addressed to the respondent. Where service is effected otherwise than by a bailiff a copy of the document served, with the place and mode of service indorsed thereon and an affidavit of service, must within three clear days next after the date of service be sent by the petitioner to the registrar. (*ibid.*, rr. 48—50.) As to service of a default summons, see p. 473, *ante*.

(*e*) County Court Rules, Ord. 50, r. 52. A sealed copy of the order of the judge on any petition, signed by the registrar, must be sent by the registrar by post to the clerk of the compensation authority (*ibid.*, r. 54).

(*f*) Licensing Rules, 1904, r. 71 (1).

(*g*) County Court Rules, Ord. 50, r. 58; as to procedure on a petition generally, see p. 481, *ante*.

money, or, where the reference relates only to a share, out of that share, or to be paid by any party to the proceedings to any other party (*h*).

The costs are taxed on such county court scale as the judge directs, or, in default of such direction, on the scale applicable, as if the proceedings had been a petition relating to a fund in court (*i*).

The costs of an application to appoint a receiver under r. 71 of the Licensing Rules, 1904, are allowed on the scale applicable to a petition to the court in which the subject-matter of the petition amounts to or, as the case may be, exceeds £50 (*k*).

SECT. 31.—*Literary and Scientific Institutions Act*, 1854.

Jurisdiction.

1616. By the Literary and Scientific Institutions Act, 1854 (*l*), jurisdiction is conferred on county courts in respect of the following matters:—(1) Where, upon the dissolution of an institution a dispute arises amongst the governing body or the members of the institution the adjustment of its affairs must be referred to the judge of a county court, who may make such order or orders as he may deem requisite, or, if he finds it necessary, must direct proceedings to be taken in the Court of Chancery (*m*); (2) if upon a dissolution the members cannot agree as to what other institution the surplus, remaining after satisfaction of all liabilities shall be given, the same must be determined by a judge of a county court (*n*).

Procedure.

1617. In either of the cases mentioned above the proceedings must be taken before the judge of the county court of the district in which the principal building of the institution is situated (*o*).

(*h*) County Court Rules, Ord. 50, r. 56 (1).

(*i*) *Ibid.*, r. 56 (1). As to the costs above mentioned, see County Court Rules, Ord. 53, r. 12. The provisions of County Court Rules, Ord. 53, rr. 7, 8, as to special allowances which may be made by the judge apply (County Court Rules, Ord. 50, r. 56 (2)) where the costs are taxed under column C. (1) The fees allowable under items 70 to 73 may be increased at the discretion of the registrar, subject to review by the judge, or by special order of the judge under County Court Rules, Ord. 53, r. 8 (see *supra*) to any sum not exceeding the following:—Item 70 may be increased to £5 5*s.*; items 71 to 73 may be increased to £3 3*s.* (2) Reasonable fees may be allowed to counsel in excess of those mentioned in items 85 to 94, in respect of the matters referred to in these items, at the discretion of the registrar, subject to review by the judge, or by special order of the judge under County Court Rules, Ord. 53, r. 8 (County Court Rules, Ord. 50, r. 56 (3)). Where proceedings are taken for which no provision is made by the rules or scales of costs, reasonable costs may be allowed in respect of such proceedings by the registrar, subject to review by the judge, or by special order of the judge, not exceeding those which may, under the scales or this rule, be allowed in respect of proceedings of a like nature (*ibid.*, r. 56 (4)). Where any costs are ordered to be paid out of the compensation money or any share thereof, such costs must be taxed, and a certificate of taxation must be signed by the registrar and forwarded by him by post to the clerk of the compensation authority (*ibid.*, r. 56 (5)).

(*k*) County Court Rules, Ord. 50, r. 5.

(*l*) 17 & 18 Vict. c. 112; see, generally, title LITERARY AND SCIENTIFIC INSTITUTIONS.

(*m*) Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), s. 29.

(*n*) *Ibid.*, s. 30.

(*o*) *Ibid.*, ss. 29—30.

SECT. 31. Literary and Scientific Institutions Act, 1854.

A dispute under s. 29 of the Act must be referred by plaint and summons in the ordinary way (*p*).

Particulars of demand must be filed stating concisely the nature of the dispute referred and the relief or order which the plaintiff claims (*q*).

The claiming or aggrieved member must be made plaintiff and the society, either in its own name or in the names of such persons as are by the Act authorised to be sued on behalf of the society, defendants (*r*).

Costs.

1618. Neither the Act nor the County Court Rules make any special provisions as to costs, and the costs would therefore appear to be in the discretion of the court (*s*).

SECT. 32.—*Loan Societies Act*, 1840.

Jurisdiction.

1619. The Loan Societies Act, 1840 (*t*), provides for the formation of loan societies for making loans to the industrious classes (*a*) and for the form etc. in which notes for the repayment of such loans are to be taken (*b*), and that the treasurer or clerk of such society may proceed for the recovery of the sum due on such note against the parties liable to pay the same in any county court having jurisdiction to the amount so due (*c*).

Procedure.

1620. The procedure is the same as in any other action for debt in the county court (*d*), that is, by action commenced by plaint and summons in the ordinary way, and the general provisions of the Acts and rules as to costs, appeal etc. will apply to such proceedings (*e*).

SECT. 33.—*Local Loans Act*, 1875.

Jurisdiction.

1621. Under the Local Loans Act, 1875 (*f*), jurisdiction is conferred on the county court in respect of the following matters:—(1) Where a local authority makes default for a period of

(*p*) County Court Rules, Ord. 41, r. 1.
(*q*) *Ibid.*, r. 3.
(*r*) *Ibid.*, r. 2. The Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), by s. 21 provides that "any institution incorporated which shall not be entitled to sue and be sued by any corporate name, may sue or be sued in the name of the president, chairman, principal secretary, or clerk, as shall be determined by the rules and regulations of the institution, and in default of such determination in the name of such person as shall be appointed by the governing body for such occasion, provided that it shall be competent for any person having a claim or demand against the institution to sue the president or chairman thereof, if, on application to the governing body, some other officer or person be not nominated to be the defendant."
(*s*) See County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113, which provides, "All the costs of any action or matter in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the court shall think just."
(*t*) 3 & 4 Vict. c. 110; see, generally, title LOAN SOCIETIES.
(*a*) Loan Societies Act, 1840 (3 & 4 Vict. c. 110), s. 3.
(*b*) *Ibid.*, s. 16.
(*c*) *Ibid.*, s. 17.
(*d*) *Ibid.*
(*e*) *Ibid.* For the general procedure etc. in an action, see pp. 460 *et seq.*, ***ante.***
(*f*) 38 & 39 Vict. c. 83; and see, generally, title LOCAL GOVERNMENT.

twenty-one days in paying an amount of not less than £500 (whether in one sum or separate sums) due on or in respect of any security issued under the Act, the county court, at the instance of the persons entitled to such amount or any of such persons, may appoint and remove a receiver (*g*); (2) the court, on the application of a person aggrieved, may rectify a register of nominal securities where the value of the security or securities to which the application relates does not exceed £50 (*h*).

Procedure.

1622. An application under either of the foregoing provisions must be made by petition, and the same procedure must be followed as in the case of any other petition to the court (*i*); the petition must be presented to the court of the district in which the local authority exercises its jurisdiction (*k*).

Costs.

1623. In applications under s. 12 the same costs and fees are allowed as on any other petition to the court in which the subject matter exceeds £100 (*l*), and on applications under s. 25 as on a petition in which the subject-matter exceeds £20 and does not exceed £100 (*m*).

Appeal.

1624. There are no express provisions, either in the Act or in the County Court Rules, as to appeal, and the ordinary rights of appeal therefore attach to applications made under the above provisions (*n*).

SECT. 34.—*London Building Act*, 1894.

Jurisdiction.

1625. Under the London Building Act, 1894 (*o*), jurisdiction is conferred on the county court in respect of the following matters:—

(1) To entertain an appeal from an award given by surveyors appointed in a case of difference between a building owner (*p*) and an adjoining owner (*q*) in reference to work to which a notice under the Act relates (*r*).

(2) On application by an adjoining owner, to settle the amount of security to be given by a building owner, for the expenses, costs, and compensation which may be payable by the building owner in respect of work which he is authorised by the Act to execute (*s*).

(3) In cases where the county court has jurisdiction under the Act to settle the time and manner of executing any work, or of doing any other thing, and to impose upon the parties to the case terms as to the execution of the work (*t*).

(*g*) Local Loans Act, 1875 (38 & 39 Vict. c. 83), s. 12.
(*h*) *Ibid.*, s. 25.
(*i*) County Court Rules, Ord. 50, rr. 6, 7.
(*k*) *Ibid.*, r. 8.
(*l*) *Ibid.*, r. 6.
(*m*) *Ibid.*, r. 7.
(*n*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.
(*o*) 57 & 58 Vict. c. ccxiii.; see, generally, title METROPOLIS.
(*p*) For the definition of building owner, see London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 5 (31).
(*q*) For the definition of adjoining owner, see *ibid.*, s. 5 (32).
(*r*) *Ibid.*, s. 91 (2).
(*s*) *Ibid.*, s. 94.
(*t*) *Ibid.*, s. 168.

SECT. 34. London Building Act, 1894.

(4) Where, in pursuance of the Act, consent is required to be given, any notice to be served, or anything to be done by, on, or to any owner, and no owner can be found, the judge of the county court may give such consent, or do, or cause to be done, such thing on such terms and conditions as he may think fit, and may dispense with the service of any notice which, otherwise, would require to be served (*a*).

Procedure on appeal against award.

1626. An appeal against the award of a surveyor (*b*) must be made within fourteen days from the delivery of the award (*c*) by filing with the registrar of the county court two copies of the award, together with a written statement in duplicate of the grounds of the appeal (*d*), thereupon the registrar must enter a plaint and summons calling upon the other party to show cause why the award should not be rescinded or modified, and must annex to the summons for service a copy of the award and statement of the grounds of appeal, which copies are deemed to be part of the summons (*e*).

The practice, procedure, and costs in an action are applicable to appeals hereunder (*f*).

If the appellant, on appearing before the county court, declares his unwillingness to have the matter decided by that court, and proves that in the event of the matter being decided against him he will be liable to pay a sum, exclusive of costs, exceeding £50, then, upon the appellant giving security to prosecute his appeal in the High Court, all proceedings in the county court are to be stayed (*g*).

Applications to settle security.

1627. An application to settle the security to be given by a building owner (*h*) must be made by action commenced by plaint and summons in the ordinary way, and particulars of demand must be filed with the application stating concisely the relief or order which the plaintiff claims (*i*).

Applications as to consents etc.

1628. An application as to consents etc. on behalf of owners not to be found (*k*) is made by petition, and the practice, procedure, and costs are the same as on any other petition to the court (*l*).

Appeal.

1629. The right of appeal in all the above cases is the same as the party would have under the County Courts Act, 1888, from any decision of the court in any matter (*m*).

(*a*) London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 196.
(*b*) Under *ibid.*, s. 91.
(*c*) *Ibid.*, s. 91 (2).
(*d*) County Court Rules, Ord. 50, r. 30.
(*e*) *Ibid.*, r. 30 (2).
(*f*) *Ibid.*, r. 30 (3).
(*g*) London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 91 (5).
(*h*) Under *ibid.*, s. 94.
(*i*) County Court Rules, Ord. 50, r. 31.
(*k*) Under London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 196.
(*l*) County Court Rules, Ord. 50, r. 32.
(*m*) London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 168. As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

SECT. 35.—*Lunacy Act*, 1890.

SECT. 35. Lunacy Act, 1890.

1630. The Lunacy Act, 1890 (*n*), confers various powers on the county court and the judge thereof, namely:—

Reception order.

(1) A judge of county courts is a "judicial authority," *i.e.*, one of the persons who may sign a reception order for the reception of a lunatic in an institution for lunatics (*o*); this power, however, although conferred on a county court judge by virtue of his office, is not conferred on him as an officer of the court, and is not, therefore, a jurisdiction of the county court which comes within the scope of the present work.

Order to sell property of lunatic.

(2) Where a reception order is made in the case of a lunatic the value of whose whole estate is under £200, and no relative or friend of the lunatic is willing to undertake the management of his property, any judge of county courts having jurisdiction in the place from which the lunatic is sent may, upon the application of the clerk of the guardians or a relieving officer of the union from which the lunatic is sent, authorise the clerk or relieving officer, or such other person as the judge by his order appoints, to take possession of and sell and realise the real and personal property of the lunatic, and to exercise all the powers which could be exercised by the legal personal representative of the lunatic if he were dead; and the receipt of the person so authorised is a valid discharge to any person who pays any money or delivers any property of the lunatic to the person so authorised (*p*). The judge, by the same or any subsequent order, may give such directions as he thinks fit as to the application of the property of the lunatic for his benefit, or in reimbursement of such sums as may have been or may be expended by the guardians of the union for his care or relief, or of the costs or expenses incurred in relation to the lunatic by such guardians, or by the person acting under any such order as aforesaid, or the judge may, if he thinks fit, order that the whole or any part of the proceeds of the lunatic's property be paid into the county court to the credit of an account intituled in the matter of such lunatic, and any sums so paid into court may be either invested in the manner provided by the County Court Rules in force for the time being, or be paid out of court from time to time to such person as the judge directs, to be held and applied for the benefit of such lunatic, or in or towards such reimbursement as aforesaid, in such manner as the judge directs (*q*). The person acting under any such order must render an account of his dealings with the lunatic's property in the manner appointed by the judge (*r*).

(*n*) 53 Vict. c. 5; see, generally, title LUNATICS AND PERSONS OF UNSOUND MIND.

(*o*) Lunacy Act, 1890 (53 Vict. c. 5), s. 9 (1); and see also *ibid.*, ss. 4—8.

(*p*) *Ibid.*, s. 132 (1). A county court judge has no power under this section to make an order for the transfer of stock standing in the name of the lunatic; such stock can only be dealt with by the judge in lunacy (*Re Noyce*, [1892] 1 Q. B. 642, C. A.).

(*q*) Lunacy Act, 1890 (53 Vict. c. 5), s. 132 (2). As to the investment of money paid into a county court, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 71; County Court Rules, Ord. 37, rr. 1—6.

(*r*) Lunacy Act, 1890 (53 Vict. c. 5), s. 132 (3).

SECT. 35. Lunacy Act, 1890.

(3) An order may be made by a judge of county courts, upon the application by the guardians of any union, for payment of the expenses incurred by such guardians under the Act in relation to a lunatic, and such order may be enforced against any property of the lunatic in the same way as a judgment of the county court (*s*).

Procedure and costs.

1631. Applications under s. 132 or s. 300 are made by petition, and the same procedure is to be followed and the same costs allowed as on a petition under Ord. 38 of the County Court Rules (*t*).

Appeal.

1632. There are no express provisions, either in the Act or in the County Court Rules, as to appeal, and the ordinary right of appeal therefore attaches to applications under the above provisions (*a*).

SECT. 36.—*Married Women's Property Act*, 1882.

Jurisdiction.

1633. Under the Married Women's Property Act, 1882 (*b*), special jurisdiction is conferred on the county court concurrently with the High Court in respect of the following matters:—

Appointment of trustee of a life policy.

(1) To appoint a trustee of a policy of life insurance, effected by the husband or the wife for the benefit of the other of them, either alone or together with their children, or for their children alone, where the amount of such policy does not exceed the sum of £500 (*c*).

Procedure.

An application to appoint a trustee of a life policy (*d*) must be made by petition, and the same procedure is to be followed and the same costs allowed as on any other petition to the court, regard being had to the amount of the subject-matter of the petition (*e*).

An application under the above provision must be made to the court of the district in which the persons making the application or any of them reside (*f*).

Neither the Act nor the rules specify who may apply hereunder;

(*s*) Lunacy Act, 1890 (53 Vict. c. 5), s. 300. As to the execution of county court judgments, see County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 146—163; County Court Rules, Ord. 25; and pp. 550 *et seq.*, *ante*. The Statute of Limitations applies to a claim under the above section, and only six years' arrears can therefore be recovered (*Re Watson, Stamford Union* v. *Bartlett*, [1899] 1 Ch. 72).

(*t*) County Court Rules, Ord. 50, r. 17; Ord. 38 makes no provision as to costs, and the costs of matters coming within Ord. 38 appear to be regulated by Ord. 53, r. 12.

(*a*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*b*) 45 & 46 Vict. c. 75; see, generally, title HUSBAND AND WIFE.

(*c*) *Ibid.*, s. 11. In terms this section confers jurisdiction on "any court having jurisdiction under the Trustee Act, 1850, or the Acts amending and extending the same"; and by the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (5), county courts have jurisdiction under the Trustee Acts where the fund to which the matter relates does not exceed £500 in amount or value. As to the construction of s. 11 (which is similar in terms to Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 10), see *Holt* v. *Everall* (1876), 2 Ch. D. 266, C. A.

(*d*) *Ibid.*, s. 11.

(*e*) County Court Rules, Ord. 46, r. 1. Should the subject-matter not exceed £20 the judge may order the costs to be taxed under column B (*ibid.*).

(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75.

the application should be made either by the insurance company or some person interested.

There being no special provisions as to appeal, the proceedings are subject to the ordinary right of appeal (*g*).

SECT. 36. Married Women's Property Act, 1882.

(2) Where there is a question between a husband and wife as to the title or possession of property, either party or any bank, corporation, company, public body, or society in whose books any stocks, funds, or shares of either party are standing may apply in a summary manner (irrespective of the value of the property in dispute) to the judge of the county court of the district in which either party resides, to make such order with respect to the property in dispute, and as to the costs of and consequent on such application, as the judge may think fit (*h*).

Question between husband and wife as to title etc. of property.

In an application under the above provisions particulars of the question to be submitted to the court must be filed and thereupon a summons is issued in the form provided, the same fee being payable as on the entry of a plaint (*i*). For the purpose of all subsequent proceedings the proceedings are deemed to be commenced by plaint (*k*); the proceedings must be taken in the court of the district within which the husband or wife resides (*l*).

Procedure.

1634. The order of the court is by the Act made subject to the usual right of appeal (*m*).

Appeal.

Proceedings brought in the county court under the above provision may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court (*n*).

Removal into High Court.

SECT. 37.—*Municipal Elections (Corrupt and Illegal Practices) Act*, 1884.

1635. Under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*o*), all claims in respect of expenses incurred by or on behalf of a candidate at an election for a councillor on account of or in respect of the management or conduct of such election must be sent in within fourteen days after the day of election, and must be paid within twenty-one days of the election (*p*), subject to the power of the county court of the district in which the election was held to allow a claim to be sent in or paid after the times so limited, on the application either of the candidate or the creditor (*q*). The order allowing time may make the allowance conditional upon such terms as seem to the court calculated for carrying into effect the objects of the Act, and the effect of such

Jurisdiction.

(*g*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.
(*h*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 17.
(*i*) County Court Rules, Ord. 46, r. 2.
(*k*) *Ibid.*
(*l*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 17.
(*m*) *Ibid.*
(*n*) *Ibid.*
(*o*) 47 & 48 Vict. c. 70; see title ELECTIONS.
(*p*) *Ibid.*, s. 21 (1).
(*q*) *Ibid.*, s. 21 (6).

SECT. 37. Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

order is to relieve the applicant from all liability or consequence imposed by the Act in respect of the matters excused (*r*).

1636. The application must be intituled in the matter of the Act and of the election, and must be made in accordance with the rules for the time being in force as to interlocutory applications and supported by affidavit. The court may direct notice of the application to be given to any returning officer or rival candidate (*s*).

Costs.

1637. There are no special provisions as to costs; the costs of and incident to the application are therefore in the discretion of the judge or registrar (*t*).

SECT. 38.—*Open Spaces Act*, 1906.

Jurisdiction.

1638. The Open Spaces Act, 1906 (*a*), provides that where an open space is vested in trustees for any charitable purposes and as part of their trust estate, such trustees may, under the circumstances and conditions in the Act mentioned, and with the consent of the court, convey or demise such open space to a local authority on such terms as may be authorised or approved or as the court may order (*b*).

The court for the purpose of the above provision is either the High Court or the county court of the district in which the whole or any part of the open space is situate (*c*).

Procedure and costs.

1639. The application must be made by petition intituled in the matter of the Act and of the open space in respect of which the application is made; and the same procedure is to be followed and the same costs allowed as on any other petition to the court, the annual value of the open space being treated as the basis for determining the scale of costs (*d*).

Appeal.

1640. There are no special provisions as to appeal, and petitions brought under the above provisions are therefore subject to the ordinary rights of appeal (*e*).

(*r*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 21 (8).

(*s*) County Court Rules, Ord. 50, r. 16; for the rules as to interlocutory applications generally, see County Court Rules, Ord. 12, r. 11.

(*t*) County Court Rules, Ord. 12, r. 11 (4).

(*a*) 6 Edw. 7, c. 25, replacing and repealing Open Spaces Act, 1887 and 1890 (50 & 51 Vict. c. 32; 53 & 54 Vict. c. 15), and Metropolitan Open Spaces Acts, 1877 and 1881 (40 & 41 Vict. c. 35; 44 & 45 Vict. c. 34); see, generally, title OPEN SPACES.

(*b*) Open Spaces Act, 1906 (6 Edw. 7, c. 25), s. 4 (1).

(*c*) *Ibid.*, s. 4 (2).

(*d*) County Court Rules, Ord. 50, r. 18. This order was made under the provisions of the Open Spaces Act, 1890 (53 & 54 Vict. c. 15), which is now repealed. As, however, no new rule has been made, and as, moreover, ss. 4 and 5 of the Act of 1890 are substantially re-enacted by s. 4 of the present Act, it would seem that the procedure laid down by the above rule should be followed. The point is, however, not very material, as if Ord. 50, r. 18, does not apply, then, there being in that case no special provision as to procedure, the procedure would still be by petition under the provisions of Ord. 50, rr. 35, 36.

(*e*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

SECT. 39. *Parliamentary Elections (Returning Officers) Act, 1875; Local Government (England and Wales) Act, 1888.*

SECT. 39. Parliamentary Elections Act, 1875 etc

SUB-SECT. 1.—*Jurisdiction.*

Jurisdiction.

1641. Under the Parliamentary Elections (Returning Officers) Act, 1875 (*f*), the returning officer must send, within twenty-one days after the return of the person elected, to the candidate or his election agent, a detailed account of the amount claimed by the returning officer, and thereupon the person from whom payment is claimed may apply to have the account taxed (*g*), in which case the returning officer may himself apply to the court to tax the claims of persons against him which are included in the bill sought to be taxed (*h*).

The same provisions, with the necessary modifications, apply to elections under the Local Government Act, 1888 (*i*).

The court, for the purpose of the Act, is in the City of London the Lord Mayor's Court and elsewhere in England the county court; the court may depute any of its powers or duties under the Act to the registrar or other principal officer of the court (*k*).

SUB-SECT. 2.—*Procedure.*

Application to tax.

1642. The application to tax must be made in writing according to the prescribed form, and must state on whose behalf the application is made and contain a submission on the part of the applicant to pay what shall be found due on taxation (*l*).

The application must be made, in the case of a parliamentary election, within fourteen days after the transmission of the account of the returning officer (*m*), and in the case of an election under the Local Government Act within one month after such transmission (*n*).

Fixing of examination.

1643. Upon receipt of an application the court must fix the place and time for taxation, and the registrar must issue to the bailiff for service on the applicant and the returning officer a notice thereof in the prescribed form signed by the registrar (*o*).

Where application is made to the court by a returning officer to examine a claim made on him, such application must be in the prescribed form and must contain a submission to pay what shall be found due on taxation (*p*).

(*f*) 38 & 39 Vict. c. 84; see, generally, title ELECTIONS.
(*g*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 4.
(*h*) *Ibid.*, s. 5.
(*i*) 51 & 52 Vict. c. 41, s. 75 (19).
(*k*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 4.
(*l*) County Court Rules, Ord. 43, r. 1. For the prescribed form, see County Court Rules, Appendix, Form 423.
(*m*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 4.
(*n*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (19).
(*o*) County Court Rules, Ord. 43, r. 2; for the prescribed form, see County Court Rules, Appendix, Form 424.
(*p*) County Court Rules, Ord. 43, r. 3; for the prescribed form, see County Court Rules, Appendix, Form 426.

SECT. 39. Parliamentary Elections Act, 1875 etc.

On receipt of such last-named application the court must fix the time and place for such examination to take place before the taxation of the charges of the returning officer is concluded, and the registrar must issue to the bailiff, for service on the returning officer and on the person whose claim is to be examined, a notice thereof in the prescribed form signed by the registrar (*q*).

The bailiff must serve all copies of the above-named notices ten days at least before the day fixed for the taxation or examination in accordance with the rules as to service of ordinary summonses (*r*).

Evidence.

1644. Unless by consent or otherwise ordered, only oral evidence is admitted on the taxation or examination (*s*).

Determination of amount.

1645. The court must finally determine the amount payable to the returning officer and may give and enforce judgment for the same as if such judgment were judgment in an action (*t*).

SUB-SECT. 3.—*Costs and Appeal.*

Costs.

1646. The costs are in the discretion of the court (*a*).

The judge or officer by whom an account or claim is taxed or examined must deliver to the returning officer and to the other party a certificate in the prescribed form showing the items and amounts allowed or disallowed, together with a copy of any order or judgment made thereon (*b*).

Appeal.

1647. Within seven days after the delivery to him of such certificate either party may give notice in writing to such judge or officer of his intention to appeal, specifying in the notice the items and amounts in respect of which he intends to appeal (*c*).

The judge or officer must thereupon transmit all the documents and vouchers to the taxing officer of the King's Bench Division of the High Court, and such taxing officer must thereupon proceed to review the taxation or examination, and may confirm or vary the certificate and direct by whom all or any part of the costs of review are to be paid, and must thereupon return the certificate, as so confirmed or varied, to the said judge or officer, who must thereupon give effect to such certificate, as so varied or confirmed, and to any

(*q*) County Court Rules, Ord. 43, r. 4; for the prescribed form, see County Court Rules, Appendix, Form 427.

(*r*) County Court Rules, Ord. 43, r. 5; for the provisions as to service of ordinary summonses, see County Court Rules, Ord. 7, r. 10, and pp. 468 *et seq.*, *ante*.

(*s*) County Court Rules, Ord. 43, r. 6.

(*t*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 4. The order made on the taxation or examination must be in accordance with such of the prescribed forms as may be applicable, with such variations as the circumstances may require (County Court Rules, Ord. 43, r. 7); for the prescribed forms, see County Court Rules, Appendix, Forms 425 and 428.

(*a*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), ss. 4, 5.

(*b*) Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886 (49 & 50 Vict. c. 57), s. 1; for the prescribed form, see County Court Rules, Appendix, Form 429.

(*c*) Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886 (49 & 50 Vict. c. 57), s. 1.

such direction, as if the same had been a judgment of the county court (*d*).

Any such taxation, or review of taxation, is subject to appeal to the High Court in the same manner as an ordinary taxation of costs (*e*).

SECT. 39. Parliamentary Elections Act, 1875 etc.

SECT. 40.—*Partition Acts*, 1868 *and* 1876.

1648. County courts have the same jurisdiction as the Courts of Chancery (*f*), in suits for partition brought under the provisions of the Partition Act, 1868 (*g*), and the Partition Act, 1876 (*h*), in cases where the property to which the suit relates does not exceed £500 in value (*i*). Jurisdiction.

1649. There are no special provisions as to procedure, and proceedings must therefore be by action commenced by plaint and summons in the ordinary way (*k*). All the persons, other than the plaintiff, interested in the property should be made defendants. Procedure.

After the commencement of a suit for partition the court, upon the request of persons interested, individually or collectively, to the extent of one-half or upwards of the property to which the suit relates, may direct a sale of the property (*l*).

Upon an order for sale being made the judge must appoint one solicitor to have the conduct of the proceedings, and only such solicitor is thereafter entitled to costs (*m*).

1650. Notice of the decree or order, made on the hearing of a partition, must be served on all persons who, if the Act had not been passed, would have been necessary parties to the suit; and such persons are thereafter bound by the proceedings as if they had been originally parties to the suit (*n*). Notice of decree or order.

Power is now given to dispense with the service of such notice in special cases (*o*), in which case the special provisions as to notice by advertisement must be followed (*p*).

1651. There are no special provisions as to costs in the county court, and the general provisions as to costs therefore apply, subject Costs.

(*d*) Parliamentary Elections (Returning Officers) Act (1875) Amendment Act (49 & 50 Vict. c. 57), s. 1.
(*e*) *Ibid.*, s. 1.
(*f*) See, generally, title PARTITION.
(*g*) 31 & 32 Vict. c. 40.
(*h*) 39 & 40 Vict. c. 17.
(*i*) Partition Act, 1868 (31 & 32 Vict. c. 40), s. 12.
(*k*) County Court Rules, Ord. 50, r. 35. For form of particulars, see County Court Rules, Appendix, Form 324.
(*l*) Partition Act, 1868 (31 & 32 Vict. c. 40), s. 4. As to signing form of request for sale, see County Court Rules, Ord. 9, r. 10; and County Court Rules, Appendix, Form 325. Ord. 9, r. 10 only applies when all the persons interested sign; when only a moiety consent, Form 325 should be altered accordingly.
(*m*) County Court Rules, Ord. 9, r. 11.
(*n*) Partition Act, 1868 (31 & 32 Vict. c. 40), s. 9, under which and the County Court Rules, Ord. 3, r. 27, any such person may, at the next sitting of the court after such service, apply to the judge to discharge, vary, or add to the decree or order.
(*o*) Partition Act, 1876 (39 & 40 Vict. c. 17), s. 3.
(*p*) *Ibid.*, s. 4 (3).

SECT. 40. Partition Acts, 1868 and 1876.

to the rules which govern the allowance of costs in such actions in the Chancery Division (*q*).

Appeal.

1652. There are no express provisions, either in the Act or in the County Court Rules, as to appeal, and the ordinary right of appeal in an action therefore attaches to proceedings brought under the above provisions (*r*).

SECT. 41.—*Pharmacy Acts*, 1852 *and* 1868.

Jurisdiction.

1653. The county court has exclusive jurisdiction for the recovery of penalties, for the improper use of the title pharmaceutical chemist (*a*), for the improper sale of poisons (*b*).

The proceedings must be brought within six months after the commission of the offence (*c*).

The jurisdiction to recover these penalties being conferred on the county court exclusively, such claims are not subject to any limitation as to amount.

Procedure.

1654. No special procedure has been prescribed, and the proceedings are therefore by action commenced by plaint and summons in the ordinary way (*d*), and the ordinary rules of practice and procedure apply (*e*).

The action must be brought by the registrar of the Pharmaceutical Society as plaintiff (*f*).

Costs.

The successful party is entitled to the full costs of suit (*g*).

Appeal.

There being no special provisions as to appeal, the proceedings are subject to the ordinary right of appeal in an action (*h*).

SECT. 42.—*Poor Law Amendment Act*, 1848.

Jurisdiction.

1655. Under the Poor Law Amendment Act, 1848 (*i*), relief advanced by the guardians of a union by way of loan under the

(*q*) As to the practice of the courts in allowing costs in partition actions, see, generally, title PARTITION. As a general rule the costs of a partition action should be borne by the parties in proportion to their interests, as declared by the judgment (*Ball* v. *Kemp-Welch* (1880), 14 Ch. D. 512; *Cannon* v. *Johnson* (1870), L. R. 11 Eq. 90; *Hills* v. *Archer*, [1904] W. N. 113). Where a sale is ordered, the usual practice is to give the costs of all parties out of the proceeds of the sale (*Graham* v. *Clinton (Lord)* (1899), 81 L. T. 717). As a general rule only one set of costs should be allowed in respect of such share, but the court has a discretion, and, where there has been a sale, in an action for sale, in lieu of partition, and some of the parties have mortgaged their shares, the mortgagees may be allowed separate sets of costs (*Re Vase, Langrish* v. *Vase* (1901), 84 L. T. 761).

(*r*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*a*) Pharmacy Act, 1852 (15 & 16 Vict. c. 56), s. 12; see, generally, title MEDICINE AND PHARMACY.

(*b*) Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 15.

(*c*) Pharmacy Act, 1852 (15 & 16 Vict. c. 56), s. 12.

(*d*) County Court Rules, Ord. 50, r. 35.

(*e*) *Ibid.*, r. 36.

(*f*) Pharmacy Act, 1852 (15 & 16 Vict. c. 56), s. 12.

(*g*) *Ibid.*, s. 13.

(*h*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120, and pp. 601 *et seq.*, *ante*.

(*i*) 11 & 12 Vict. c. 110; see, generally, title POOR LAW.

provisions of the Poor Law Amendment Act of 1834 (*k*) is recoverable in the county court of the district wherein the union or the greater part thereof is comprised (*l*). SECT. 42. Poor Law Amendment Act, 1848.

1656. No special procedure has been prescribed, and the proceedings are therefore by action commenced by plaint and summons in the ordinary way (*m*), and the ordinary rules of practice and procedure apply (*n*). The guardians must be made plaintiffs, and they may appear and be heard by any officer properly appointed by them for such purpose (*o*). Procedure.

1657. There being no special provisions as to appeal, the proceedings are subject to the ordinary rights of appeal in an action (*p*). Appeal.

SECT. 43.—*Private Street Works Act*, 1892.

1658. The Private Street Works Act, 1892 (*q*), which is to be construed as one with the Public Health Acts (*r*), extends and applies to any urban sanitary district in which it is adopted under the provisions of the Act (*s*), and such urban authority may (in addition to and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or, as a simple contract debt by action, in any court of competent jurisdiction, the sum due from the owner of any premises for expenses of private street works, together with interest at a rate not exceeding 4 per cent. per annum from the date of final apportionment till payment (*t*). It follows from the above provision that, where the amount claimed is within the limit of the county court jurisdiction, the action may be brought in a county court. Jurisdiction.

1659. No special procedure is prescribed, and the action must therefore be brought by plaint and summons in the ordinary way (*a*), and the general practice of the court applies to such action (*b*). Procedure.

SECT. 44.—*Public Health Act*, 1875; *Public Health (London) Act*, 1891.

1660. The matters in respect of which jurisdiction is conferred on the county court under the Public Health Act, 1875 (*c*), may be Jurisdiction.

(*k*) 4 & 5 Will. 4, c. 76, s. 58.
(*l*) Poor Law Amendment Act, 1848 (11 & 12 Vict. c. 110), s. 8.
(*m*) County Court Rules, Ord. 50, r. 35.
(*n*) *Ibid.*, r. 36.
(*o*) Poor Law Amendment Act, 1848 (11 & 12 Vict. c. 110), s. 8.
(*p*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120, and pp. 601 *et seq.*, *ante*.
(*q*) 55 & 56 Vict. c. 57; see, generally, title HIGHWAYS, STREETS AND BRIDGES.
(*r*) Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 1.
(*s*) *Ibid.*, s. 2.
(*t*) *Ibid.*, s. 14. The six months' limitation, which applies to actions brought under s. 261 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), does not apply to actions brought under this section (*Blackburn Corporation* v. *Sanderson*, [1902] 1 K. B. 794, C. A.).
(*a*) County Court Rules, Ord. 50, r. 35.
(*b*) *Ibid.*, r. 36.
(*c*) 38 & 39 Vict. c. 55; see, generally, title PUBLIC HEALTH ETC.

SECT. 44. Public Health Act, 1875 etc.

summarised under three headings, and it is to be noticed that the jurisdictions dealt with under headings (1) and (3) are the same as are conferred by the Public Health (London) Act, 1891 (*d*).

Costs of making a complaint etc.

(1) Costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or of any justice in relation to a nuisance under the Act, or in carrying the same into effect, are deemed to be money paid for the use and at the request of the person on whom the order is made, or the person by whose act or default the nuisance was caused, and such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered either in a summary manner or in any county or superior court; and such court has power to divide costs, expenses, and penalties between persons by whose acts or defaults a nuisance has been caused (*e*).

Default of local authority.

(2) Where a local authority has made default in doing its duty in relation to nuisances under the Act, the Local Government Board may authorise any officer of police acting within the district of such authority to institute proceedings which such authority might institute with respect to such nuisances, and any expenses incurred by such officer and not paid by the person proceeded against may be recovered by him from the defaulting authority either in a summary manner or in any county or superior court (*f*).

Under the above provisions it would seem that the county court has a jurisdiction which is unlimited as to amount.

Demands below £50.

(3) Proceedings for the recovery of demands below £50 which under the Act local authorities are empowered to recover in a summary manner may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognisance of such courts (*g*).

Such proceedings must be taken within six months from the time when the matter arose (*h*).

It would seem that if a claim exceeds £50 the only remedy, except in cases where other remedies are expressly provided, is by summary proceedings, and that no action will lie in the High Court (*i*).

Procedure.

1661. No special procedure being prescribed, the proceedings are by action commenced by plaint and summons in the ordinary

(*d*) 54 & 55 Vict. c. 76; see, generally, title METROPOLIS.

(*e*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 104; Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 11.

(*f*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 106.

(*g*) *Ibid.*, s. 261; Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 117 (2). It would seem that this provision is confined to demands which could otherwise only be recovered in a summary manner, and will not apply to demands as to which other alternate modes of recovery are prescribed.

(*h*) *Tottenham Local Board* v. *Rowell* (1876), 1 Ex. D. 514, C. A.

(*i*) This follows from the rule that where a debt is created by statute which expressly provides for its recovery the remedy so provided is exhaustive and must be followed (see *St. Pancras Vestry* v. *Batterbury* (1857), 2 C. B. (N. S.) 477). The *dictum* of MATHEW, J., in *Eccles* v. *Wirral Rural Sanitary Authority* (1886), 17 Q. B. D. 107, to the effect that a jurisdiction in the superior courts must be inferred in claims over £50, appears to be unsupported by any authority.

way (*k*), and the general practice of the court, so far as not inconsistent with the Act, will apply to such proceedings (*l*).

In the same way, there being no special provisions as to appeal or costs, these will be the same as in any other action (*m*).

SECT. 45.—*Public Trustee Act*, 1906.

Jurisdiction.

1662. The Public Trustee Act, 1906 (*n*), establishes the office of public trustee with various powers and duties (*o*), and where any person is aggrieved by any act or omission or decision of the public trustee in relation to any trust, such person may apply to the court, who may make such order in the matter as seems just (*p*).

The Act also provides for the investigation and audit of the conditions and accounts of any trust (*q*), and where a person having the custody of any documents to which an auditor appointed in pursuance of the above provision has a right of access fails or refuses to allow such access, or obstructs the auditor in the investigation or audit, the court, upon the application of the auditor, may make such order as seems just (*r*).

The expression "court," as used in the Act, means the county court with respect to trusts within the jurisdiction of the county court (*s*), and the county court has, therefore, jurisdiction in trusts where the trust estate or fund does not exceed £500 in amount or value (*t*).

Procedure.

1663. No special procedure is prescribed either by the Act or the County Court Rules, and the procedure to be followed would therefore seem to be that laid down by Ord. 50, rr. 35 and 36, of the County Court Rules, under which the general practice of the courts will apply to such proceedings (*a*).

Under the rules above mentioned, an application by an auditor under s. 13 of the Act must be made by action commenced by plaint and summons in the ordinary way (*b*), whereas applications under s. 10 of the Act relating to acts, omissions, or decisions of the public trustee should in most if not in all cases be made either by petition or in accordance with the rules for the time being in force as to interlocutory applications, supported, in either case, by affidavit (*c*).

Costs.

As the general practice of the court applies to proceedings under

(*k*) County Court Rules, Ord. 50, r. 35.
(*l*) *Ibid.*, r. 36.
(*m*) As to this, see further, p. 625, *ante*.
(*n*) 6 Edw. 7, c. 55; see also Public Trustee Rules, 1907; and, generally, title TRUSTS AND TRUSTEES.
(*o*) Public Trustee Act, 1906 (6 Edw. 7, c. 55), ss. 2—6.
(*p*) *Ibid.*, s. 10.
(*q*) *Ibid.*, s. 13.
(*r*) *Ibid.*, s. 13 (6).
(*s*) *Ibid.*, s. 15.
(*t*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67 (2)—(5); see p. 444, *ante*.
(*a*) County Court Rules, Ord. 50, r. 36. For a different view taken as to the procedure, see Yearly County Court Practice, 1909, Vol. II., p. 463.
(*b*) County Court Rules, Ord. 50, r. 35.
(*c*) *Ibid.*

SECT. 45. Public Trustee Act, 1906.

this Act (*d*) and the costs of such proceedings and the right of appeal are the same as in similar proceedings under the general jurisdiction of the court (*e*).

SECT. 46.—*Riot (Damages) Act*, 1886.

Jurisdiction.

1664. The Riot (Damages) Act, 1886 (*f*), makes provision for compensation by the police authority to persons suffering damage by riot (*g*), and where a claim for such compensation has been made in accordance with the regulations (*h*), and the claimant is aggrieved by the refusal or failure of the police authority to fix compensation or by the amount of compensation fixed, he may bring an action against the police authority to recover the compensation claimed, and, where such amount does not exceed £100, the action must be brought in the county court of a district in which any part of the police authority is situate (*i*).

Procedure.

1665. No special procedure has been prescribed, and the proceedings are therefore by action commenced by plaint and summons in the ordinary way (*k*), and the ordinary rules of practice and procedure apply (*l*).

Costs.

1666. If a claimant is successful he would seem to be entitled to costs as in other cases (*m*), but if the claimant fails to recover any compensation, or to recover an amount exceeding that fixed by the police authority, he is liable to pay the costs of the police authority as between solicitor and client (*n*).

Appeal.

1667. There being no special provisions as to appeal, the proceedings are subject to the ordinary right of appeal, in an action (*o*).

SECT. 47.—*Rivers Pollution Prevention Acts*, 1876 *and* 1893.

Jurisdiction.

1668. The general scheme of the Rivers Pollution Prevention Acts, 1876 and 1893 (*p*), is to prevent the pollution of rivers and streams. Under the Act of 1876 power is conferred on a county

(*d*) County Court Rules, Ord. 50, r. 36.

(*e*) For the provisions as to costs generally, see pp. 578 *et seq.*, *ante;* as to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante.*

(*f*) 49 & 50 Vict. c. 38; see, generally, title CRIMINAL LAW AND PROCEDURE.

(*g*) Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), ss. 2, 3.

(*h*) See the regulations issued by the Home Office, June 30, 1894.

(*i*) Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), s. 4.

(*k*) County Court Rules, Ord. 50, r. 35.

(*l*) *Ibid.*, r. 36.

(*m*) R. 11 of the regulations as to claims for compensation (June, 1894) provides that "no costs shall be allowed to any claimant"; this, however, appears to refer to costs of claims, and not to costs of action.

(*n*) Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), s. 4 (1).

(*o*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante.*

(*p*) 39 & 40 Vict. c. 75; 56 & 57 Vict. c. 31; see, generally, titles WATERS AND WATERCOURSES; NUISANCE.

court to make a summary order requiring any person to abstain from the commission of any offence against the Act, and, where such offence is a default to perform a duty under the Act, to make an order requiring the offender to perform such duty (*q*).

Any person making default in complying with an order of a county court made under the above provision is liable to pay to the person complaining, or such other person as the court may direct, such sum, not exceeding £50 a day for every day in which he is in default, as the court may order, and such penalty may be enforced in the same manner as a judgment debt (*r*); and where default is made in obeying an order for not less than a month, or such other period as may be prescribed by such order, the court, in addition to imposing a penalty, may appoint any person or persons to carry such order into effect, and the expense incurred in so doing, to such amount as may be allowed by the court, is deemed to be a debt due from the person in default to the persons executing such order, and may be recovered accordingly in the county court (*s*).

The jurisdiction conferred by the above provisions is exclusive and unlimited as to amount.

1669. The proceedings must be instituted in the county court having jurisdiction in the place where the offence is committed (*t*). Venue.

The persons to enforce the provisions of the Act are the sanitary authority (*a*), and they, consequently, are the proper persons to institute proceedings; any other sanitary authority or person may be proceeded against (*b*). Parties.

1670. As no special form of procedure is prescribed, the proceedings are by action commenced by plaint and summons in the ordinary way (*c*), and the general rules of practice and procedure relating to actions in the county court apply (*d*). All the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, apply to all proceedings under the Act as if such actions related to a matter within the ordinary jurisdiction of the court (*e*). An order for discovery may therefore be made in proceedings brought under the above provisions (*f*). Procedure.

Previous to granting an order the court may remit the matter to skilled parties to report on the "best practicable and available means" and the nature and cost of works and apparatus required, and such parties must take into consideration the reasonableness of the expenses involved in their report (*g*).

(*q*) Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 10.
(*r*) *Ibid.*, s. 10.
(*s*) *Ibid.*
(*t*) *Ibid.*
(*a*) *Ibid.*, s. 8.
(*b*) *Ibid.*
(*c*) County Court Rules, Ord. 50, r. 35.
(*d*) *Ibid.*, r. 36.
(*e*) Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 11.
(*f*) *Derby Corporation* v. *Derbyshire County Council*, [1897] A. C. 550.
(*g*) Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 13.

SECT. 47. Rivers Pollution Prevention Acts, 1876 and 1893.

1671. Any plaint entered under the Act may be removed into the High Court of Justice by leave of any judge of the High Court, if it appears that it is desirable, in the interests of justice, that such case should be tried in the High Court, and such judge may make the order of removal, subject to such terms as to security for and payment of costs and otherwise as he may think fit (*h*).

Costs.

1672. Proceedings under the Act are within the provisions of ord. 53, r. 8, of the County Court Rules, and the judge may make the special allowances mentioned in that order (*i*). If the judge certifies in writing that the proceedings involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons or was of general or public interest, and allows costs under column C, further special allowances may be made on taxation (*k*).

Where proceedings are taken for which no provision is made by the scales of costs, reasonable costs may be allowed by the registrar, subject to review by the judge, not exceeding those which, under the scales or under Ord. 53, r. 45, of the County Court Rules, may be allowed in proceedings of a like nature (*l*).

Scientific witnesses may be allowed the costs of qualifying to give evidence as well as for their actual attendance at the trial (*m*).

Appeal.

1673. Either party may appeal to the High Court against the decision of the county court in point of law or on the merits, or in respect of the admission or rejection of any evidence, and the Court of Appeal may draw any inferences from the facts that a jury might draw from the facts stated by witnesses (*n*).

SECT. 48.—*Sale of Exhausted Parish Lands Act*, 1876.

Jurisdiction.

1674. Under the Sale of Exhausted Parish Lands Act, 1876 (*o*), power is given by order of the Local Government Board to sell exhausted parish lands (*p*). If there are any disputed claims to

(*h*) Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 11. Where intricate questions of law and fact arise, and the questions of fact depend upon evidence which can more conveniently be taken in the locality of the county court, no order of transfer should be made, since in any case a full right of appeal exists (*Yorkshire (West Riding) Rivers Board* v. *Ravensthorpe Urban District Council* (1907), 71 J. P. 209.

(*i*) County Court Rules, Ord. 53, r. 45 (1).

(*k*) *Ibid.*, r. 45 (2); as to the special costs above referred to, see *ibid.*; and p. 582, *ante*.

(*l*) County Court Rules, Ord. 53, r. 45 (3).

(*m*) *Mackley* v. *Chillingworth* (1877), 2 C. P. D. 273.

(*n*) Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 11. The above section provides that the appeal shall be in the form of a special case, but it is now settled that, by virtue of the County Courts Act, 1888 (51 & 52 Vict. c. 43), the appeal must be brought by notice of motion under *ibid.*, s. 120 (*Kirkheaton District Local Board v. Ainley, Sons & Co.* [1892] 2 Q. B. 274, C. A., *per* BOWEN, L.J., at p. 287).

All the enactments, rules, and orders relating to appeals from decisions of the county court judges, and to the conditions of such appeals, and to the powers of the superior courts on such appeals apply to appeals, under the Act, in the same manner as if such appeal related to a matter within the ordinary jurisdiction of the court (Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 11).

(*o*) 39 & 40 Vict. c. 62; see, generally, title LOCAL GOVERNMENT.

(*p*) *Ibid.*, ss. 1, 2.

any interest in such lands, or if the person entitled to such interest is under legal disability, the Board must, in cases where the amount of the value in question does not exceed £50, direct proceedings to be taken in the county court for the settlement of the dispute, or for the proper disposal of the amount due to the person under disability (*q*).

Procedure in case of dispute.

1675. In the case of disputed claims to any interest in the land or the purchase-money thereof, the proceedings must be by action commenced by plaint and summons in the ordinary way, and particulars of demand must be filed stating concisely the relief or order claimed (*r*).

Any person claiming any such interest may be plaintiff, and the person or authority in whose hands the purchase-money may be must be made defendant (*s*).

The person or authority in whose hands the purchase-money is may, at any time after service of the summons, pay such purchase-money into court, and thereupon further proceedings against such person or authority must be stayed (*t*).

The judge at the trial of the action must decide upon the rights of the several persons claiming any interest in the land or purchase-money, and make such order for the purpose of giving effect to such rights, and as to costs, as may be just (*a*).

Procedure where no dispute.

1676. In cases where there is no dispute, but a person entitled to any interest in the purchase-money is under legal disability, the person or authority in whose hands such purchase-money is may pay the same into court (*b*), or a petition may be filed on behalf of the person under disability asking for the direction of the court as to the disposal of the purchase-money (*c*). Such petition must be served on the person or authority in whose hands the purchase-money is, and the same procedure must be followed and the same costs allowed as on any other petition to the court (*d*). After service of the petition as aforesaid the person or authority holding the purchase-money may at any time pay the same into court, and thereupon further proceedings against him or them are to be stayed (*e*).

Venue.

1677. As no special provision is made as to venue the ordinary rules as to venue apply, and a petition must be brought within the court of the district within which the lands are situated (*f*), and an action may by leave be brought in the same court, or without

(*q*) Sale of Exhausted Parish Lands Act, 1876 (39 & 40 Vict. c. 62), s. 3.
(*r*) County Court Rules, Ord. 50, r. 10 (a).
(*s*) *Ibid.*
(*t*) *Ibid.*
(*a*) *Ibid.*
(*b*) *Ibid.*, r. 10 (b) (i.), under which the payment in is to be made under the provisions of s. 70 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), and County Court Rules, Ord. 37, r. 9, which section and rule apply to the payment in and to the subsequent disposal of the money; see also p. 498, *ante*.
(*c*) County Court Rules, Ord. 50, r. 10 (b) (ii.).
(*d*) *Ibid.*
(*e*) *Ibid.*
(*f*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75 (1).

SECT. 48. Sale of Exhausted Parish Lands Act, 1876.

leave in the court of the district in which the defendants, or one of them dwell or carry on business (*g*).

1678. No special provisions are made as to appeal, and the proceedings are therefore subject to the ordinary right of appeal (*h*)

SECT. 49.—*Settled Land Acts*, 1882 *to* 1890.

Jurisdiction.

1679. Under the Settled Land Acts, 1882 to 1890 (*i*), various powers (*k*) are conferred on "the court," and all the powers exercisable under these Acts by the court may be exercised by the county court as regards (1) land not exceeding £500 in capital value or £30 in annual rateable value; (2) capital money arising under the Act and securities in which the same is invested not exceeding £500 in amount or value; (3) personal chattels not exceeding £500 in value (*l*).

Procedure.

1680. The proceedings are commenced by filing a petition, with as many copies as there are respondents to be served, intituled in the matter of the Settled Land Acts, 1882 to 1890, and in the matter of the settlement (*m*); at the foot of the petition, and of every copy thereof, a statement must be made of the persons, if any, intended to be served therewith, or, if such is the fact, that no person is intended to be served (*n*).

Venue.

The proceedings must be commenced in the court within the district whereof any part of the land to be dealt with, or from which the capital money arises, or in connection with which the personal chattels are settled, is situated (*o*).

Unless the judge otherwise orders, the facts relied on in support of or in opposition to the petition must be proved by affidavit (*p*).

Reference to registrar.

The judge may refer any matters to the registrar to make inquiries and to report (*q*).

Order of judge.

The order or judgment must be drawn up, sealed, and filed by the registrar (*r*), and in every final judgment or order liberty must be given to all parties to apply (*s*).

Costs.

1681. Where the subject-matter does not exceed £20 the judge may order the costs to be taxed under column B (*t*).

(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74.

(*h*) As to the right of appeal generally, see *ibid.*, s. 120; and pp. 601 *et seq.*, *ante*.

(*i*) 45 & 46 Vict. c. 38; 47 & 48 Vict. c. 18; 50 & 51 Vict. c. 30; 52 & 53 Vict. c. 36; 53 & 54 Vict. c. 69.

(*k*) As to these powers, see, generally, title REAL PROPERTY AND CHATTELS REAL.

(*l*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 46 (10). It is to be noted that the jurisdiction conferred by this section is confined to cases where the *whole* of the settled estate does not exceed £500 in value (*Re Malthouse Close* (1890), 89 L. T. Jo. 325).

(*m*) County Court Rules, Ord. 38, r. 1.

(*n*) *Ibid.*, r. 2. For the provisions as to service, fixing day of hearing etc., see *ibid.*, rr. 3—4; and pp. 481 *et seq.*, *ante*.

(*o*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 46 (10).

(*p*) County Court Rules, Ord. 38, r. 5.

(*q*) *Ibid.*, r. 6.

(*r*) *Ibid.*, r. 8.

(*s*) *Ibid.*, r. 7.

(*t*) County Court Rules, Ord. 53, r. 12. It is submitted that proceedings

SECT. 49. Settled Land Acts, 1882 to 1890.

1682. There are no special provisions as to appeal, and the proceedings are therefore subject to the ordinary right of appeal (*a*).

SECT. 50.—*Small Dwellings Acquisition Act*, 1899.

Jurisdiction.

1683. Under the Small Dwellings Acquisition Act, 1899 (*b*), power is given to a local authority to advance money to enable persons, resident in small houses, to purchase their house (*c*).

In certain events specified in the Act the local authority may either take possession of the house on which it has made advances or may, without taking possession, order the sale of the house (*d*).

In cases where possession is taken the local authority must pay to the proprietor of such house either (1) such sum as may be agreed upon, or (2) a sum equal to the value of the interest in the house at the disposal of the local authority (after deducting the amount of the advance unpaid and any interest due), which value is to be settled by a county court judge as arbitrator, or, if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge (*e*).

Where the local authority are entitled to take possession, possession may be recovered (whatever the value of the house) either under the provisions of the County Courts Act, 1888, relating to the recovery of possession (*f*), or under the Small Tenements Recovery Act, 1838 (*g*), as in the cases therein provided, as if the local authority were the landlord and the proprietor of the house were the tenant (*h*).

Procedure.

1684. The procedure to recover possession is the same as in any other action of a like nature in the county court, except that the jurisdiction conferred by the Act is, as stated above, unlimited as to value (*i*).

Proceedings to determine the value of the interest of the proprietor in a house taken possession of by a local authority are by arbitration, the county court judge being the arbitrator; and the provisions of the Arbitration Act, 1889 (*k*), apply to such arbitration (*l*).

under the Settled Land Acts are proceedings under the equitable jurisdiction of the court, to which the ordinary rules as to costs in equitable proceedings apply, and in respect of which the judge may make a special order as to costs under County Court Rules, Ord. 53, r. 8; see also p. 588, *ante*.

(*a*) As to the right of appeal generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*b*) 62 & 63 Vict. c. 44; see, generally, title LOCAL GOVERNMENT.

(*c*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 1.

(*d*) *Ibid.*, s. 3 (3), (4), (5).

(*e*) *Ibid.*, s. 5 (2).

(*f*) 51 & 52 Vict. c. 43, ss. 138—145; see p. 436, *ante*.

(*g*) 1 & 2 Vict. c. 74; see title LANDLORD AND TENANT.

(*h*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 5 (5).

(*i*) For the general procedure in actions to recover possession, see p. 436, *ante*.

(*k*) 52 & 53 Vict. c. 49.

(*l*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 5 (2), (b); as to the procedure on arbitrations generally, see title ARBITRATION, Vol. I., pp. 436 *et seq.*

SECT. 50. Small Dwellings Acquisition Act, 1899.

1685. There are no special provisions either as to costs or appeal, and actions to recover possession will therefore be subject to the general rules as to costs and appeals (*m*).

SECT. 51.—*Solicitors Act*, 1870.

Jurisdiction.

1686. Under the Solicitors Act, 1870 (*n*), the remuneration of solicitors and attorneys may be fixed by agreement (*o*). No action or suit may be instituted on any such agreement, but any question respecting its validity or effect may be determined, and the agreement may be enforced or set aside by the court in which the business or any part thereof was done (*p*), or, if the business was not done in any court and the amount payable thereunder does not exceed £50, then by a judge of a county court which would have jurisdiction in an action on the agreement (*q*).

Procedure.

1687. The application must be made by petition intituled in the matter of the Act and of the agreement; the same procedure is to be followed and the same costs allowed as on any other petition to the court, regard being had to the amount of the subject-matter of the petition (*r*).

The application may be made by any party to the agreement, or by any person liable or alleged to be liable to pay, or by any person entitled or claiming to be entitled to be paid, the costs etc. in respect of which the agreement was made (*s*).

Appeal.

1688. There are no special rules as to appeals, and the ordinary right of appeal would seem to apply to applications made under the above Act (*t*).

SECT. 52.—*Stannaries Court (Abolition) Act*, 1896.

Jurisdiction.

1689. The Stannaries Court (Abolition) Act, 1896 (*a*), which came into operation on the 1st January, 1897, abolished the Court of the Vice-Warden of the Stannaries, except for the purpose of proceedings then pending, and transferred all the jurisdiction and powers then vested in the Stannaries Court to such county courts as might be directed by the Lord Chancellor (*b*). By an order of

(*m*) As to costs in such cases, see pp. 578 *et seq.*, *ante*; as to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

(*n*) 33 & 34 Vict. c. 28; see, generally, title SOLICITORS.

(*o*) Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4.

(*p*) A county court has jurisdiction under this part of the section irrespective of the amount of the bill, and although such amount may exceed its ordinary limit of jurisdiction (*ibid*, s. 8).

(*q*) *Ibid.*, s. 8. As to the orders which may be made on such an application, see *ibid.*, ss. 9, 10.

(*r*) County Court Rules, Ord. 50, r. 4.

(*s*) Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 8.

(*t*) As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 45), s. 120; and pp. 601 *et seq.*, *ante*.

(*a*) 59 & 60 Vict. c. 45; see, generally, titles COURTS; MINES, MINERALS AND QUARRIES.

(*b*) Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), s. 1.

SECT. 52. Stannaries Court (Abolition) Act, 1896.

the Lord Chancellor made under the above provision the jurisdiction and powers of the Stannaries Court were transferred to the county courts of Cornwall, and all proceedings pending at the commencement of the Act were transferred to the county court held at Truro (*c*), and, except so far as the same have been expressly abolished, the jurisdictions formerly possessed by the Stannaries Court exist, and can be exercised, irrespective of amount, by the judge of the county court (*d*).

1690. The procedure in cases brought under the Stannaries jurisdiction is regulated by the County Court Rules made in pursuance of the Act (*e*), which rules also make provisions as to costs in special cases (*f*); a special order regulating the fees in certain proceedings has also been made (*g*). Procedure.

SECT. 53.—*Succession Duty Act*, 1853.

1691. The Succession Duty Act, 1853 (*h*), makes provision for the assessment by the Commissioners of Inland Revenue of duties on succession to real estate, and provides that any party dissatisfied with such an assessment, where the sum in dispute does not exceed £50, may appeal to the judge of the county court, who may hear and determine the matter of such appeal and the costs thereof, with power to direct, for the purpose of such appeal, any inquiry, valuation, or report to be made by any officer of the court or other person as the judge may direct (*i*). Jurisdiction.

1692. The party desirous of appealing must give to the Commissioners notice in writing of his intention to appeal within twenty-one days after the date of the assessment, and must furnish a statement of the grounds of his appeal within the further period of thirty days (*k*). The proceedings in the county court are commenced by petition intituled in the matter of the Succession Duty Act, 1853, and the Acts amending the same (*l*), and a copy thereof, with a notice of the day and hour on which the petition will be heard, must be served on the Commissioners (*m*). Procedure.

The judge may, either at or before the hearing, allow the appellant to amend his petition, upon such terms as the judge may think right (*n*).

(*c*) See order dated 16th December, 1896.

(*d*) By County Court Rules, Ord. 51, r. 5, "pursers' and creditors' suits" were abolished.

(*e*) *Ibid.*, rr. 1—28.

(*f*) *Ibid.*, r. 28.

(*g*) County Court (Stannaries) Fees Order, 1897 (20th April, 1897).

(*h*) 16 & 17 Vict. c. 51. The duties imposed by the Act are increased by the Finance Acts, 1894 (57 & 58 Vict. c. 30) and 1896 (59 & 60 Vict. c. 28). As to succession duties, see, generally, title DEATH DUTIES.

(*i*) Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 50.

(*k*) *Ibid.*, s. 50. It is not quite clear from the language of the Act whether the period of thirty days runs from the expiration of the notice or from the date of the assessment.

(*l*) County Court Rules, Ord. 42, r. 1.

(*m*) *Ibid.*, rr. 1, 5. By *ibid.*, r. 5, the service must be made in accordance with County Court Rules, Ord. 38, rr. 3, 4.

(*n*) County Count Rules, Ord. 42, r. 9.

SECT. 53. Succession Duty Act, 1853.

Subject to the above power of amendment, the appellant may not state in his petition, or rely upon at the hearing, any grounds of appeal not specifically set forth in the statement of the grounds of appeal (*o*). Unless by consent or otherwise ordered, only oral evidence can be admitted at the hearing (*p*). The Crown has the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents (*q*).

Order of judge.

The registrar must draw up, seal, and file any order made by the judge on the petition (*r*).

Neither in the Act nor in the rules are there any special provisions either as to costs or as to appeal, and the general provisions as to these would therefore seem to apply (*s*).

SECT. 54.—*Telegraph Acts*, 1863 *and* 1878.

Jurisdiction.

1693. Where under the Telegraph Act, 1878 (*t*), or under the Telegraph Act, 1863 (*a*), any difference arises between the Postmaster-General and a body or person having power to withhold consent as to the placing of telegraphs etc. upon a street or public road, such difference must be referred to the police or stipendiary magistrate having jurisdiction within the district in which the dispute has arisen, or, if there be no such magistrate, to the judge of the county court having jurisdiction within such district (*b*).

Procedure.

1694. Where a difference is referred to the judge, the provisions of ss. 30 to 33, both inclusive, of the Regulation of Railways Act, 1868 (*c*), apply as if the judge were an arbitrator appointed pursuant to those sections, and as if the Postmaster-General, body, or person between whom the difference has arisen were companies within the meaning of those sections (*d*).

Subject to the above provisions the procedure is the same as in an ordinary action determined by the judge without a jury, and all the rules and provisions relating to such an action apply with the necessary modifications, for which purpose the application is deemed to be a summons with particulars annexed, the day fixed for the hearing, the return day, and the applicant and respondent the plaintiff and defendant respectively (*e*).

(*o*) County Court Rules, Ord. 42, r. 6.
(*p*) *Ibid.*, r. 7.
(*q*) *Ibid.*, r. 8.
(*r*) *Ibid.*, r. 11.
(*s*) As to this, see, further, p. 625, *ante*.
(*t*) 41 & 42 Vict. c. 76; see, generally, title TELEGRAPHS AND TELEPHONES.
(*a*) 26 & 27 Vict. c. 112.
(*b*) 41 & 42 Vict. c. 76, s. 4. In *National Telephone Co.* v. *Tunbridge Wells Corporation* (1901), 85 L. T. 368, C. A., it was held that where the postmaster had, under s. 5 (1) of the Telegraph Act, 1892 (55 & 56 Vict. c. 59), delegated the powers conferred on him by the Telegraph Acts, 1863 and 1878, to a licensee, the licensee could not proceed under s. 4 of the Act of 1878 in face of the proviso in s. 5 (2) (b) of the Act of 1892, which gives the urban authority a practical veto as against the licensee. In such a case, therefore, the county court judge has no jurisdiction and prohibition will lie.
(*c*) 31 & 32 Vict. c. 119.
(*d*) Telegraph Act, 1878 (41 & 42 Vict. c. 76), s. 4.
(*e*) County Court Rules, Ord. 50, r. 11 (13).

The difference is referred by either of the parties thereto filing with the registrar an application to the judge to hear and determine such difference; the application must be intituled in the matter of the Act and of the difference, and must be entered and numbered and reckoned as a plaint (*f*).

Particulars.

Particulars must be appended or annexed to the application (*g*), which must be supported by an affidavit setting forth the circumstances in which, and the grounds on which, the application is made (*h*).

On the filing of the application the registrar must fix the day of hearing before the judge (*i*).

The copies and notices above mentioned must be served on each respondent ten clear days at least before the day of hearing, unless such respondent or his solicitor agrees to accept shorter service (*k*).

Affidavits.

A respondent intending to use an affidavit must file the same and serve a copy thereof on the applicant four clear days at least before the day of hearing, or, if short notice of the application has been accepted, in such reasonable time before the hearing as such service will allow (*l*).

(*f*) County Court Rules, Ord. 50, r. 11 (2).

(*g*) *Ibid.*, r. 11 (2). The particulars must contain—(a) a concise statement of the grounds on which the application is made, and of the relief or order which the applicant claims; (b) the full names and addresses of the respondents and of the applicant, and of his solicitor if the proceedings are commenced through a solicitor (*ibid.*).

(*h*) *Ibid.* The applicant must deliver to the registrar a copy of the application, particulars, and affidavit for the judge, and a copy for each respondent to be served (*ibid.*, r. 11 (3)).

(*i*) *Ibid.*, r. 11 (4). The day of hearing must be fixed for a court appointed to be held within twenty-eight days from the date of the application, or if there is no such court available the judge must appoint the day of hearing, but in either case so as to allow the copies of the application etc. to be served on the respondents ten clear days at least before the day so fixed (*ibid.*, r. 11 (4), (5)). On the day of hearing being fixed the registrar must give notice thereof to the applicant and issue the copies of the application etc. and copies of the notices of hearing for service on the respondents (*ibid.*, r. 11 (6)).

(*k*) *Ibid.*, r. 11 (7). Such copies and notices may be served—(i.) by a bailiff of a court, or at the request of the applicant or his solicitor; (ii.) by the applicant, or some clerk or servant in his permanent and exclusive employ; or (iii.) by the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them (*ibid.*, r. 11 (8)).

Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, must within three clear days next after the date of service, or such further time as may be allowed by the registrar, be sent to the registrar by the applicant or his solicitor. The applicant or his solicitor must also deliver or transmit to the registrar an affidavit of the service of such document according to the form prescribed (see County Court Rules, Appendix, Form 37), with any necessary variations (County Court Rules, Ord. 50, r. 11 (10)). Service may be effected either in accordance with the rules as to service of default summonses, or by registered post (*ibid.*, r. 11 (9)). As to service of default summonses, see p. 473, *ante*.

(*l*) *Ibid.*, r. 11 (11). A deponent to an affidavit must, on notice from the other side, attend the hearing for cross-examination, and witnesses may be orally examined at the hearing in the same manner as on the hearing of an action. The award of the judge is prepared by the registrar, and must be sealed, filed, and served on all persons affected thereby, and is enforceable in the some manner as a judgment or order of the court. The judge has power at

SECT. 54. Telegraph Acts, 1863 and 1878.

1695. The costs awarded are to be taxed on such scale as the judge may direct, and in default of such direction are taxable under scale B (*m*).

Costs.

Appeals.

1696. Either party, within twenty-one days after the award or decision of the judge, may by notice in writing to the other party require the difference to be referred to the railway commissioners (*n*).

SECT. 55.—*Tithe Act*, 1891.

Jurisdiction.

1697. Under the Tithe Act, 1891 (*o*), jurisdiction is conferred on the county court in respect of the following matters :—

(1) To make an order for the recovery of a sum due on account of tithe rentcharge (*a*) in cases where such sum is in arrear for not less than three months (*b*).

(2) To make an order for the remission of so much of a sum claimed on account of tithe rentcharge in excess of two-thirds of the annual value of the lands in cases where such lands are used solely for agricultural or pastoral purposes or for the growth of timber or underwood (*c*).

(3) To make an order upon the owner of a tithe rentcharge for the payment out of such tithe rentcharge of a rate assessed on such owner in respect thereof (*d*).

Venue.

1698. The application must in all cases be made to the county court of the district in which the lands subject to the tithe rentcharge or any part thereof are situated (*e*).

Parties.

An application for an order for the recovery of a sum due on account of tithe rentcharge is made by the person claiming the same (*f*). An application for remission can only be made in cases where a sum due in respect of tithe rentcharge is made in the county court (*g*), and is therefore made by cross-notice by the respondent (*h*). An application for the payment of rates out of a tithe rentcharge is made by the rate collector (*i*).

Procedure.

1699. The practice on applications under the Act is prescribed by special rules made thereunder (*k*), and is peculiar although in many respects analogous to the procedure in an action (*l*).

any time to correct any clerical mistake or error in his award arising from accidental slip or omission (County Court Rules, Ord. 50, r. 11 (12), (14), (15)).

(*m*) *Ibid.*, r. 11 (16).

(*n*) Telegraph Act, 1878 (41 & 42 Vict. c. 76), s. 4.

(*o*) 54 Vict. c. 8; as to tithes generally, see title ECCLESIASTICAL LAW.

(*a*) Including redemption money (*R.* v. *Paterson*, [1895] 1 Q. B. 31).

(*b*) 54 Vict. c. 8, s. 2 (1).

(*c*) *Ibid.*, s. 8.

(*d*) *Ibid.*, s. 6.

(*e*) *Ibid.*, s. 2 (1).

(*f*) *Ibid.*

(*g*) *Ibid.*, s. 8 (1).

(*h*) See Tithe Rentcharge Recovery Rules, 1891, r. 32.

(*i*) Tithe Act, 1891 (54 Vict. c. 8), s. 6 (2).

(*k*) *Ibid.*, s. 3.

(*l*) For the detailed procedure and the prescribed forms, see Tithe Rentcharge Recovery Rules, 1891, rr. 1—58, and Appendix thereto.

SECT. 55. Tithe Act, 1891.

Costs.

1700. In the absence of special directions the costs of applications under the Act abide the event (*m*); the costs are taxed by the registrar, and the ordinary scales apply (*n*). Several applications as to one parish must as far as possible be made at one time, and any extra costs occasioned by not doing so may be disallowed (*o*).

No costs either of a solicitor or of a witness can be allowed in any case where the amount claimed is paid without further proceedings, nor where notice of intention to apply for time to pay the tithe owner's claim has been given (except in cases where costs could be allowed by the court on a judgment summons (*p*)), and when notice of opposition has been given within the prescribed time the costs of a solicitor can only be allowed for work done subsequent to such notice (*q*).

Appeal.

1701. Any party in any action or matter under the Act may appeal to the High Court against the determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence (*r*).

SECT. 56.—*Trustee Act*, 1893.

Jurisdiction.

1702. The county courts, in addition to their general jurisdiction in relation to trusts under the County Courts Act, 1888 (*s*), have certain specific powers conferred upon them by the Trustee Act, 1893 (*t*), such jurisdiction being limited to cases within the ordinary equitable jurisdiction of the court, namely, to estates not exceeding £500 in value (*u*).

The jurisdictions thus conferred relate to (1) the appointment of new trustees (*b*), (2) the making of vesting orders (*c*), and (3) payment into court by trustees (*d*).

Venue.

1703. The proceedings must be instituted in the court within the district of which the persons making the application, or any of them, reside (*e*).

Procedure.

1704. The proceedings are commenced by filing a petition intituled in the matter of the Trustee Act, 1893, and of the trust

(*m*) Tithe Rentcharge Recovery Rules, 1891, r. 42.
(*n*) *Ibid.*, r. 43.
(*o*) *Ibid.*, r. 52.
(*p*) See title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 344.
(*q*) Tithe Act, 1891 (54 Vict. c. 8), s. 5 (2).
(*r*) *Ibid.*, s. 7. The procedure is the same as on any other appeal from a county court, and the right of appeal given by this section applies to all proceedings under the Act, irrespective of the amount in dispute (*ibid.*). As to appeals generally, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.
(*s*) 51 & 52 Vict. c. 43, ss. 67, 70.
(*t*) 56 & 57 Vict. c. 53; and see, generally, title TRUSTS AND TRUSTEES.
(*u*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 46. The limitation of £500 is imposed by the County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 67, 70.
(*b*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25.
(*c*) *Ibid.*, ss. 26—40.
(*d*) *Ibid.*, s. 42.
(*e*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 75 (2).

SECT. 56. Trustee Act, 1893.

or settlement, together with as many copies as there are parties to be served (*f*).

Affidavits.

Unless the judge otherwise orders, the facts relied on in support of or in opposition to a petition must be proved by affidavit (*g*).

Reference to registrar.

The judge may refer any matters to the registrar to make inquiries (*h*).

Order of judge.

The order of the judge upon an application or petition must be drawn up, sealed, and filed by the registrar (*i*), and in every final judgment or order liberty must be given to all parties to apply (*k*).

Payment into court.

Where it is desired to pay money, transfer stock, or deposit security in trust to attend the orders of the court (*l*), the person so desiring must file with the registrar an affidavit intituled in the matter of the Act and of the particular trust (*m*).

An application by a person entitled to or claiming to be interested in any fund in court for the directions of the court as to the investment, payment out, or distribution of the whole or any part of the fund or income thereof is made by petition (*n*).

Costs.

1705. Where the subject-matter does not exceed £20 the judge may order the costs to be taxed under column B (*o*), and by order of the judge, certain special allowances may be made to a party in whose favour an order is made (*p*).

Where it is desired to retain any sum of money for costs incurred in the payment of money into court, or in any matter connected with the trust prior to such payment, a bill of costs must be filed and only such sum retained as may be allowed by the registrar on taxation (*q*). Where a trustee avails himself of the statutory provisions as to payment into court (*a*) without sufficient reason, the judge may direct such trustee to bear his own costs and to pay

(*f*) County Court Rules, Ord. 38, r. 1. A statement of the persons intended to be served with such petition, or if no person is intended to be served a statement to that effect must be made at the foot of the petition. Copies of such petition, together with a notice from the registrar stating the day and hour of the hearing and a notice as to the effect of non-attendance, are then served by the bailiff in accordance with the rules as to the service of ordinary summonses (*ibid.*, rr. 2—4).

(*g*) *Ibid.*, r. 5.

(*h*) *Ibid.*, r. 6.

(*i*) *Ibid.*, r. 8.

(*k*) *Ibid.*, r. 7.

(*l*) See County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 67 (5), 70; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 42; and p. 497, *ante*.

(*m*) County Court Rules, Ord. 38, r. 9. For the contents of such affidavit, see *ibid.* The affidavit must be in the prescribed form (*ibid.*, r. 10). For the prescribed form, see County Court Rules, Appendix, Form 333, and for the procedure subsequent to the filing of the affidavit, see County Court Rules, Ord. 38, rr. 11—22.

(*n*) County Court Rules, Ord. 38, r. 23. For the contents of such petition and service etc. thereof, see *ibid.*, rr. 23, 24. The petition must be in accordance with County Court Rules, Appendix, Form 340 (County Court Rules, Ord. 38, r. 23); for the procedure subsequent to the filing of the petition, see *ibid.*, rr. 25—31.

(*o*) County Court Rules, Ord. 53, r. 12.

(*p*) *Ibid.*, r. 8. For the allowances which may be so made, see *ibid.*

(*q*) *Ibid.*, r. 11.

(*a*) See p. 497, *ante*.

SECT. 56. Trustee Act, 1893.

the costs of any other persons, or to bear and pay any part of such respective costs (*b*). Where on a petition for dealing with a fund in court (*c*) the petitioner relies only on the facts stated in the affidavit of the trustee, it is not necessary for the trustee to appear on the hearing, and if he does appear his costs can only be allowed out of the fund if the judge certifies that it was right and necessary for him to appear (*d*). The judge, at the instance of any person interested, must inquire into any prolixity, and as to any irrelevant matter in any petition or affidavit, and as to any unnecessary expenses thereby incurred, and may make such order in reference thereto as the justice of the case may require (*e*).

Appeal.

1706. The proceedings, being under the equitable jurisdiction of the court, are subject to the ordinary right of appeal in equitable proceedings (*f*).

(*b*) County Court Rules, Ord. 53, r. 25.
(*c*) See pp. 481, 692, *ante*.
(*d*) County Court Rules, Ord. 53, r. 28.
(*e*) *Ibid.*, r. 30.
(*f*) See County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120; and pp. 601 *et seq.*, *ante*.

END OF VOL. VIII.

INDEX.

COPYHOLDS, 1—134
action for debt by lord, 59
admittance, 97—107
compulsory, 105, 106
costs of, 106
definition of, 97
difference between admittance on surrender and on grant, 98
effect of, 98
entry of, on court rolls, 15
express, 100
form of, 100
implied, 100
lord compellable to grant, when, 103
not necessary where surrenderee is in of his old estate, 99
of adverse claimants, 105
bailiff, 105
coparceners, 102
devisee, 98
of an unadmitted surrenderor, 103
executor, 102
guardian, 81, 105
joint tenants, 103
lunatic, 105
particular tenant does not secure, for those entitled to a contingent remainder, 99
secures, for those in remainder, 98
purchaser under Settled Land Acts, 104
reversioner, 99
surrenderee of one of joint tenants who have made parol partition, 103
tenant by the curtesy, 102
tenants in common, 104
trustees, 103
widow, 102
on exercise of power of sale or appointment, 104
proof of, 101
right to compel, 105
of surrenderee of unadmitted heir, 102
separate admittance for each separate tenement, 100
validity of, 10
who may grant, 101
adscripti glebæ, meaning of, 5
advowson appendant, when it passes under a grant of manor, 19
allotment of manorial lands, effect of, 21
amercements, meaning of, 59
ancient demesne, nature of, 67
freeholds, nature of, 66
appendant manors, 3
award of enfranchisement by Board of Agriculture and Fisheries, 125
bailiff, powers and duties of, 65
bargain and sale, copyholds passing by, 67
Board of Agriculture and Fisheries, powers and duties of, as to enfranchisement under Copyhold Act, 1894...128
powers of, to define boundaries, 47
boundaries, non-maintenance of, by tenant, 47
power of Board of Agriculture and Fisheries to define, 47

COPYHOLDS—*continued.*
boundaries, settlement of, on enfranchisement under Copyhold Act, 1894...128
charitable trusts, enfranchisement of manor held on, 134
churchwardens cannot hold land by copy of court roll, 66, 105
co-existing customs, 23
Commissioners of Woods, management of Crown manors vested in, 4
compensation on voluntary enfranchisement, 119
under Copyhold Act, 1894...119
Lands Clauses Consolidation Act, 1845, how found, 129
Settled Land Acts, how raised, 130
construction of customs of manor, 9
conveyance of a manor, what comprised in, 19
corporation aggregate cannot hold land by copy of court roll, 14
court baron, 11
jurisdiction of, 11
number of suitors to constitute, 11
right to hold, 11, 12
steward is essential part of, 11
time and place of holding, 13
leet, 12
rolls, 14—18
acknowledgment of right to production of (enfranchisement under Lands Clauses Consolidation Act, 1845), 17
(sale under a power), 17
as evidence, 17
copies of, as evidence, 18
delivery of, 15
correction of, 15
custody of, 15
after enfranchisement, 16
entry of awards of enfranchisement on, 15
disentailing assurances on, 15
grants on, 14
surrenders and admittances on, 15
wills on, 15
on, how made, 15
inspection of, right of, 16
proof of, 17
creation of tenant's estate, 82—86
by grant, 82
statute, 86
Crown, manors belonging to, 3
enfranchisement of, 132
curtesy, 78
custom, concurrent, 9
destruction of, 10
evidence, sufficient to prove, as to, 8
general, is part of law of England, 8
origin of, 8
special, must be specially pleaded and proved, 8
to entail, burden of proof of, 70
customary freeholds distinguished from copyholds, 67
evidence adducible to show tenement to be, 67
transferee of, 67, 89
manor, meaning of, 4
or copyright court, 11
time and place of holding, 13
customal or customary, as evidence of descent, 86
meaning of, 9
debt, liability of copyholds for payment of, 70
declaration of rights, action for, effect of, on proceedings for forfeiture, 52
demesne lands carried by devise of manor, 19
classification of, 5
severance of, from manor by conveyance etc., 21
descent according to common law, where custom is not clear or exhausted, 86
custom, if clear, 86
break in descent by custom, 87
Inheritance Act is applicable to copyholds, 87

COPYHOLDS—*continued.*
descent may mean "a single step in the scale of genealogy," 87
of equitable estates, 88
executory devise after devise of fee simple is by common law, 87
mortgage estates, 88
trust estates, 88
devise of manor carries demesne lands, 19
disentailing assurance, entry of, on court rolls, 15
distress after enfranchisement, 58
leviable by lord, when, 58
double fines, 33
dower, 78
Dower Act does not affect copyholds, 79
dropping fine, meaning of, 26
Duchy of Cornwall, enfranchisement in, 133
Lancaster, enfranchisement in, 133
enfranchisement, 111—134
at common law, 111—114
by conveyance of freehold to third person to use of copyholder, 112
release by copyholder to grantee of freehold, 112
of seignorial rights, 112
effect of, when made to copyholders, 113
owner of particular estate, 113
tenant in ancient demesne or tenant in tail, 113
of lunatic's copyholds, 113
to beneficial owner, bare legal estate outstanding, 113
without admittance of heir, 112
awards of, entry of, on court rolls, 15
bars estate tail, when, 73
deed of, not a conveyance, 114
distress after, 59
effect of, on escheat, 56
extinguishment of heriot by, 45
presumption of, 114
under Charitable Trusts Acts, 134
Copyhold Act, 1894, 114—129
applicable to what lands, 114
award of, by Board of Agriculture and Fisheries, 125
by infants etc. 116
married women, 116
compensation, 113
by conveyance of land, 119
right to mines or minerals, 119
waste lands of manor, 119
rentcharge, 119
certificate of charge for, 122
charge of, on enfranchised lands, 122
how ascertained, 119
to whom payable, 121
compulsory, 114
control of, by Board of Agriculture and Fisheries, 128
effect of, 126
expenses of, by whom borne, 124
how borne, 125
when due, 124
of ecclesiastical manors,
persons entitled to make, 116
powers of attorney for purposes of, 117
proceedings on death of lord or tenant, 117
purchase of tenant's interest in lieu of, 115
representation of lord by steward for purposes of, 117
requirements before, 117
transfer of charges on, 127
valuation for purposes of compensation by Board of Agriculture and Fisheries, 124
valuers, 123
voluntary, 115
Crown Lands Acts, 132
Duchy of Cornwall Acts, 133

COPYHOLDS—*continued.*
enfranchisement—*continued.*
under Duchy of Lancaster Acts, 133
Ecclesiastical Estates Act, 1851...131
Lands Clauses Consolidation Act, 1845...129
Settled Estates Act, 1877...130
Settled Land Act, 1882...130
Universities and College Estates Act, 1898...131
enrolment of deeds or surrenders barring estate tail, 72
entail, barring, 71
in case of customary freeholds, 71
equitable estate tail, 72
custom to, 70
entry for forfeiture, 50, 52
equitable estates, descent of, 88
escheat, 54—56
barred by licence effectual after death, 55
effect of, 55
enfranchisement on, 56
on heriots, 41
on death of mortgagee, 55
mortgagor, 55
sole trustee, 55
failure of trusts, 55
nature of, 54
subject to exercise of power, 55
to Crown as such does not exist, 56
waiver of, acts of lord amounting to, 55
estate by the curtesy, 78
for life, 73
with power to nominate a successor, 74
lives, effect of surrender on, 76
renewal of, as to, 76
successivé, 74
years, 76
in freebench or dower, by special custom, 78
remainder, 77
reversion, 77
pur autre vie, 74
effect of Wills Act on, 75
tail, barring of, by felon, not by administrator, 73
presumption as to, dormant, 73
dealings with, on bankruptcy, 73
exists only where there is a custom to entail, 70
felon, not administrator, bars, 73
of equitable estate, 71
essoignment, meaning of, 13
estoppel, court rolls do not operate by way of, 17
surrender cannot operate by, 95
estrays, 6
evidence, adducible to show tenement to be customary freehold, 67
as to existence and extent of manor, 18
court rolls and copies as, 18
immemorial custom, as to, 8
execution by judgment creditor, liability of copyholds to, 70
fealty, neglect of, distress for, 58
fee conditional, 70
simple, creation of, in copyholds, 68
limitation of, upon a fee simple, 91
tail, 70
fees of solicitor steward, 64
steward, 63
fines, 26—37
apportionment of, between beneficiaries, 30
arbitrary, 31
assessment of, 32
reasonableness of, how estimated, 31
certain, 31
classification of, 31

COPYHOLDS—*continued.*
fines—*continued.*
copyholds taken under Lands Clauses Consolidation Act, 1845, in case of, 29
covenant to surrender, effect of, on, 29
disputes as to, settlement of, 31
double, 33
effect of Wills Act on, 36
essentials of, 30
excessive, demand of, 31
multiplied, 33
payable on admittance of more than one person, 34
devolution, 33
surrender by more than one person, 34
nature of, 26
occasions on which fines are payable, 26
payable to whom, 30
when, 28
persons being entitled *successivé*, 35
right to, does not arise till after admittance, 105
several tenements, in case of, 30
tenant for life and remainderman, as affecting, 30
upon admittance, not payable by railway company on purchaser investing proceeds of lands taken in copyholds, 28
of joint tenants, 35
tenants in common, 35
payable by purchaser, when, 28
when due, 28
alienation, 27
change of lord, general fines, 26
tenant (dropping fine), 27
death of tenant, 27, 28
license of lord, 27
flotsam, meaning of, 7
foreclosure, 94
foreshore passes with manor, when, 4
forfeiture, 46—52
absolute, 47
act of stranger, when leading to, 49
classification of, 47
conditional, 47
effect of, 50
licence on, 51
entry for, 50, 52
for commission of waste, 48
failure to repair, 48
non-maintenance of boundaries, 47
infant not liable to, 49
lunatic not liable to, 49
married woman, when liable to, 49
proceedings for, effect of action for declaration of rights on, 52
quousque seizure, never involved by, 57
relief against, 52
waiver of, 51
franchises, 5
estrays, 6
fisheries, 7
free warren, 7
hospital, right of presentation to, 7
markets and fairs, 7
suicides and felons, right to take goods and chattels of, 7
tolls, 7
treasure trove, 7
vested in lord of manor by special grant or prescription, 5
waifs, 5
wreck, 6
freebench, 78
attaches when, 79
in reversionary interests, 80
custom, regulated entirely by, 78

COPYHOLDS—*continued.*
freebench—*continued.*
seisin of husband at death usually necessary to, 79
widow's remedy to obtain assignment, 80
general fine, meaning of, 26
grant, 82—86
classification, 82
creation of estate by, how effected, 82
effect of, as to incumbrances created by lord or tenant, 69
entry of, on courts rolls, 14
estoppel, operates by, 82
evidenced by copy of court roll, 82
persons capable of making, 84
taking, 85
incapable of taking, 85
place of making, 84
pursuant to surrender, nature of, 82
who may make, 82
subject of, what may be the, 84
validity of, depends on custom, 84
voluntary, nature of, 82
who may make, 82
guardian, admittance of, 81
appointment of, 80
duties of, 80
heir, rights of, before admittance, 102
heriot, 37—45
assertion of, against tenants at common law only, 40
claimed in what manner, 44
custom, 37, 39
essentials to claim of, 39
extinguishment of, 40
on death of dowress, 41
tenant by the curtesy, 41
woman entitled to freebench, 41
remedies for recovery of, 40
definition of, 37
distress for, 59
effect of escheat on, 41
enfranchisement, extinguishment of by, 45
multiplication of, 42
nature of, 43
not a rent, 44
on alienation, 41
property in, passes at what time, 43
remedy where the particular heriot is non-existent. 44
seizure of, 44
service, 37
cannot be apportioned, 38
extinguishment of, 39
multiplication of, 39
remedies for recovery of, 38
homage, duties of the, 13
meaning of the, 11
honour, meaning of, 3
hospital, right of presentation to, annexation of and alienation of, 7
immemorial custom, meaning of, 8
incumbrance created by tenant's deed not entered, repudiation of, 69
incumbrances cannot be imposed by lord on tenant's interest (nor *vice versâ*) after grant, 69
infant, forfeiture, not liable to, 49
inspection of court rolls, 16
jetsam, meaning of, 7
Land Transfer Act, 1897, provisions of, as to copyholds, 89
leases as evidence of customs of manor, 10
lessee of manor, right to hold court baron, 12
licence, 52—54
by steward, 54
definition of, 52

COPYHOLDS—*continued.*
licence—*continued.*
effect of on forfeiture, 51
necessary to, what Acts, 27
of lord, fines upon, 27
operation of a, 52
statutory authority to grant, 52
waste, to commit, 53
life estates, 73
ligan (or lagan), meaning of, 7
limitation of fee simple on fee simple, 91
local custom, meaning of, 8
lord of the manor, 22—59
fines payable to, 26
franchises vested in, by special grant of Crown or prescription, 5
remedies of, 56—59
action for debt, 59
distress, 58
seizure, 56
rights of, 22—56
escheat, 54
forfeiture for waste, alienation and crime, 46
heriots, 37
licence, 52—54
mines and minerals, 22
quit-rent, 46
reliefs, 45
rents of assize, 46
sporting, none save by special custom, 24
trees etc., 24
underwood, 25
lordship, another term for manor, 3
lunatic, forfeiture, not liable to, 49
mandamus to compel admittance, 105
manor, 3—22
appendancy of, 3
bed of river in, presumption as to, 4
boundaries of, evidence of, 18
conveyance of, what comprised in, 19
court rolls, 14—18
courts of, 10—14
court baron, 11
leet, 12
customary or copyhold court, 11
notice of place and time of, 13
place of holding, 13
right to hold, 12
time for holding, 13
creation of new manor, forbidden by Statute of "Quia Emptores," 3
Crown, 3
legal estate of, 4
management of, 4
customary, 4
customs of, 7
characteristics of, 8
concurrent, 9
proof of, 9
reasonableness of, 8, 9
rules of construction of, 9
definition of, 3
demesne lands, classification of, 5
derivation of word "manor," 3
destruction of, 20, 21
by acquisition of lands by the lord by operation of law, 20
allotment to tenant, 21
conveyance of demesne lands, 21
merger of mesne in paramount manor, 20
reduction in number of tenants, 21
severance of services from land, 20

COPYHOLDS—*continued.*
manor—*continued.*
devise of, carries the demesne lands, 19
division of, 19
Duchy of Cornwall, belonging to, 3
Lancaster, belonging to, 3
extent of, 4
evidence of, 18
foreshore passing with manor, 4
franchises in, 5
held of another manor by copy of court roll, 3
in gross, 4
lands of, classification of, 5
lord of. *See* lord of manor.
remedies of, 56—59
rights of, 22—56
officers of, 59—65
origin of, 3
reputed, 4
conveyance of, what comprised in, 19
scattered parcels of, 5
soil of road in, presumption as to, 4
transmission of, 19
tenant of, 65—111. *See* tenant.
married woman, forfeiture, when liable to. 49
her right to hold copyholds, 66
merger, none of distinct manors, 20
of mesne in paramount manor, 20
mesne lords, meaning of, 3
mines and minerals, 22—24
gravel etc. in waste, lord's right to take, 24
procedure to protect rights of licensee of Crown, 24
property of the lord, 22
right in, after inclosure of wastes of a manor, 22
on enfranchisement under Copyhold Act, 1894...127
rights in, are regulated by custom, 23
space left after minerals taken, right of tenant to enjoy, 24
stones embedded in soil, property in, 23
tramway for working, right to construct, 23
under Crown manor, 24
freehold tenement, property in, 22
waste and demesne lands, property in, 24
working of, so as to destroy surface, 24
mortgage effected by conditional surrender, 94
equitable, by deposit, 94
mortgagee, foreclosure by, 94
priority of, over subsequent purchaser or mortgagee, 94
multiplication of heriots, 42
multiplied fines, 33
notice of holding of manorial court, as to, 13
overseers of the poor cannot hold land by copy of court roll, 66, 105
paramount lord, meaning of, 3
parol evidence of customs of manor, 10
partition of copyholds, 69
prima tonsura, meaning of, 85
privileged copyholds, meaning of, 67
proclamations entitling lord to seizure *quousque*, 57
Public Trustee, vesting of copyholds in, 88
pur autre vie estates, 74
purchase of tenant's interest in lieu of enfranchisement, 115
quit-rents, 46
distress for, 58
quousques, seizure, 58. *See* seizure.
receivers' accounts, entries in, as evidence of customary payments, 10
release by joint tenants, 107
of condition in surrender, 107
equitable interests, 107
to one wrongfully admitted, 107
relief against forfeiture for waste, 52

COPYHOLDS—*continued.*
reliefs, 45—46
classification of, 45
distress for, 59
improper, 46
nature of, 45
proper, 45
remainder, contingent, is not in the seisin, 77
trustee to preserve, not necessary, 77
vested, is in the seisin, 77
rentcharge as compensation, apportionment of, 120
for enfranchisement, 120
recovery of, 120
redemption on sale of, 121
rents of assize, 46
reputed manors, 4
reversions, 77
river in manor, bed of, presumption as to, 4
road in manor, soil of, presumption as to, 4
seignory, another term for manor, 3
in gross, 4
value of, to support franchises, 7
suspension of, owing to purchase of manorial lands by lord, 21
seizure, 56—58
absolute, 56
modes of, 56
quousque, 57
a right of entry within Statutes of Limitation, 58
effect of, on right of common, 58
limitation of action to compel admittance, 106
proclamations usually necessary to, 57
profits not to be accounted for by lord, 58
sequestration, copyholds are liable to, 70
Settled Land Acts, application of, to copyholds, 108
severance from the manor by lord, interest of copyholder not prejudiced on, 108
sporting rights within manor, 25
stamp on copy of court rolls to be used as evidence, 17
steward of the manor, the, 59—64
appointment of, 60
de facto, 62
fees and charges of, 63
power to enforce payment of, 64
licence by, 54
nature of his office, 59
office of, a hereditament, 60
powers of, 61
removal of, 61
solicitor, power to charge, 64
stones embedded in the soil of a copyhold tenement, property in, 23
successive estates for life, 74
successor, right to nominate a, 74
suit of court, by attorney, 14
heir, 14
joint tenants, 14
married woman, 13, 14
tenant by curtesy, 14
tenants in common, 14
unmarried woman or widow, 14
meaning of, 13
neglect of, distress for, 58
specific performance of, 14
surrender, 89—111
by attorney, 97
infant, 96
married woman, 96
conditional, mortgage effected by, 93
contents of, 90
costs of, 96

COPYHOLDS—*continued.*
surrender—*continued.*
effect of, 91
entry of, on court rolls, 15, 95
essential word, not an, 90
estoppel, cannot operate by, 95
lord, a mere conduit pipe on surrender, 92
mode of, 90
proof of, 95
relation between surrender and admittance, 92
to whom it may be made, 97
tortious effect, cannot have a, 92
voluntary covenant to, when enforceable, 106
where estate for life of tenant or lives *successivé* only permitted, 96
who may make, 96
surrenderee of an unadmitted heir, right to admittance of, 102
tenancy for lives, custom of, 68
tenant, admittance of, 102
by the curtesy, 78
for life, 73
years, 76
in ancient demesne, 67
in cayte, meaning of, ?
in fee conditional, 70
tail, 70
of freeholds, not parcels of the manor, 66
the manor, 65—111
classes of, 66
estate of, creation of, 82—86
extinguishment of, by escheat, 54
forfeiture, 46
merger, 110
surrender, 109
nature of, 68
transmission of, by deed, 107
descent or statute, 86
surrender and admittance, 89
will, 108
persons capable of being, 65
pur autre vie, 74
right, nature of, 68
timber, tenant's rights as to, 25
tramway for working mines, right to construct, 23
trees, property in, as to, 24
tenant's rights in, 25
cease on severance, 25
trust estates, 81
creation of by will, 81
descent of, 88
trustee, reimbursement of, 81
valuers for purposes of Copyhold Act, 1894...123
voluntary conveyance of copyholds, 70
waifs, 5
waiver of escheat, acts of lord amounting to, 55
forfeiture, 51
waste, forfeiture for commission of, 48
licence to commit, 53
widow, admittance of, 102
will, entry of, on court rolls, 15
of a copyholder, nature of, 109
Wills Act, application of, to copyholds, 108
woodward, office of, cannot be annexed to manor, 7
wreck, 7

COPYRIGHT AND LITERARY PROPERTY, 136—208
abridgements, copyright in, 146
action for damages for infringement in case of dramatic pieces etc., 185
literary work, 165
musical compositions, 187

COPYRIGHT AND LITERARY PROPERTY—*continued.*
action for damages for infringement in case of paintings etc., 198
prints, engravings etc., 204
sculpture, models etc., 208
Acts of Parliament, copyright in, 173
adaptation of foreign dramatic pieces, 184
agreements between author and publisher, 162
annotations, copyright in, 146
"any book whatsoever," meaning of term, 158
architect, right of, in his drawings, 188
arrangement of pianoforte score from opera of another, 187
artistic work, 188—208
author of, meaning of term, 188
copyright in, 188—208
persons entitled to, 188
executed on commission, copyright in, 193
improper use of, intrusted for particular purpose, 190
meaning of term, 188
of obscene character, no copyright in, 191
publication of, 189
registration of, 190
rights in, before publication, 188
statutory period of copyright in, 190
assignee, meaning of, 137
assignment of copyright in literary works, 157—161
agreement for, enforceable in equity, 158
stamp duty on, 159
by registered proprietor of copyright, 155
effect of, 159
form of, 159
implied by relationship of parties, 158
obligation to publish exists by express agreement only, 159
on death of author or copyright proprietor, by operation of law, 157
partial, effect of, 161
second assignee, how far bound by agreement to pay royalties, 160
paintings, drawings, or photographs, 192
sculpture etc., 207
performing right in a dramatic piece or musical composition, 181
author, agreement with publisher by, 162
bankruptcy of, effect of, on ownership of copyright, 158
death of, effect of, on ownership of copyright, 157
executors of, not liable on contract to write book, 157
of literary work, who is, 137
photograph, who is, 194
print, engraving, or lithograph, who is, 200
sculpture, models, and casts, who is, 206
rights of, in regard to publisher, 148
authorised version of the Bible, 173
bankruptcy of author or copyright proprietor, effect of, on ownership of copyright, 158
Berne Convention, countries belonging to the union constituted by, 139
Bodleian Library, delivery of copies to, 175
book, collection of prints, engravings or lithographs published in volume, is a, 205
copyright in, nature of, 143
refused when, 144
definition of, 142
new edition, how far registration covers, 154
published outside United Kingdom, registration necessary before action, when, 157
registration of, 152
extent of, 155
map, chart, or plan as book, 144
who may be registered, 155
title of, when the subject-matter of copyright, 143
Book of Common Prayer, 173

COPYRIGHT AND LITERARY PROPERTY—*continued.*
British copyright, who are entitled to, 141
British Museum, delivery of copies to, 174
" British possession," definition of, 166
Cambridge Public Library, delivery of copies to, 175
casts, 206. *See* sculpture, models, and casts.
charge by proprietor of copyright by way of mortgage, 160
charts, Crown's right of publication of, 173
meaning of, 145
registration of, 144
Christmas card, copyright in, 143
cinematograph, infringement of dramatic piece by representation by, 185
compilations, copyright in, 145
Crown copyright, 172
when enforced, 173
death of author or copyright proprietor, effect of, on ownership of copyright, 158
definition of copyright, 140
digest (legal) etc., copyright in, 146
directories, copyright in, 146
dramatic entertainment, place of, meaning of, 176
pieces, adaptations of, before 1887...172
pieces and musical compositions, 175—188
"dramatic piece," meaning of, 183
joint authorship in, as to, 176
licence for performance of dramatic piece, 182
melodies, setting of old, as to, 176
novel is not a dramatic piece, 183
performing right, assignment of, 181
infringement of, dramatic pieces, 182
musical composition, 186
lost by neglect to give notice of reservation in case of musical compositions, 177
period of protection, 179
separation of, from copyright, 178
who is entitled to, 178
publication of, 177
registration of, 178, 179
colonial, 180
dramatisation of novel, as to, 183
drawings, copies of, copyright in, 194
copyright in, 191
after sale, 193
executed on commission, 193
importation of, 200
registration of, 195
"edition," meaning of, 161
encyclopædias, copyright in, 147
engravings. *See* prints, engravings and lithographs.
evidence, certified copy of entry in register is admissible, 155
executors of author not liable on contract to write book, 157
false entries on register, as to, 157
foreign copyright, how proved, 142
illustrations in books, copyright in, as to, 198
importation, infringement of literary copyright by, 165
of paintings, drawings and photographs, 200
prints, engravings and lithographs, 205
sculpture, models, or casts, 208
" in a separate form," meaning of, 148
infringement of copyright by pirated copies of musical compositions, 170
in drawings, 196
lecture, 151
literary works, 163—170
by importation, 165, 166
quotation, 147
essentials to, 164
injunction, when granted, 166
interrogatories in action for, 168
instances of, other than reprinting, 163

COPYRIGHT AND LITERARY PROPERTY—*continued.*
infringement of copyright in literary works—*continued.*
notice of objections by defendant in action for, 168
period within which action must be brought, 169
remedies for, 165—171
by action at common law, 165
for damages under Copyright Act, 1842...166
indictment for conspiracy, 166
injunction, account and delivery up of copies, 165
summary proceedings, 169
paintings, 196
photographs, 196
prints, engravings and lithographs, 203
remedies for, 204
report, 151
sculpture, models and casts, 207
sermon, 150
speech, 150
international, 142
penalties for, 169
performing right in dramatic pieces, 182
right in unpublished work, 163
injunction to restrain infringement of literary copyright, when granted, 166
international copyright, infringement of, 142
periodical literature, 149
serial stories and tales, 149
statutory period of, 140
interrogatories in action for infringement of copyright, 168
law reports, copyright in, 146
lecture, copyright in, how acquired, 150
infringement, remedies for, 151
delivered in a public foundation, 151
reports of, 151
letters, "private and confidential," 138
publication of, when restrained, 138
rights in unpublished letters, 138
Library of the Faculty of Advocates, delivery of copies to, 175
licence to engrave, etch, and print, nature of, 202
print, 161—163
compulsory, 163
exclusive, nature of, 161
implied, 161
represent dramatic piece, 182
use or copy painting, drawing, or photograph, 192
limitation of actions in case of literary works, 169
paintings, drawings, and photographs, 200
performing right in dramatic pieces, 186
of musical compositions, 188
prints, engravings, and lithographs, 206
sculpture, models, and casts, 208
lists etc., copyright in, 146
literary copyright, 136
or artistic work, meaning of, in article, 138
lithographs. *See* prints, engravings, and lithographs, 200.
magazines, copyright in, 147
map, meaning of, 145
registration of, 144
rule as to "compilations" is applicable to, 145
melodies, setting of old, 176
models, 206. *See* sculpture, models and casts.
mortgage, charge by proprietor of copyright by way of, 160
musical compositions, 175—188. *See also* dramatic pieces and musical compositions.
pirated copies of, 170
news, common law right in (before publication), 147
copyright in, 147

COPYRIGHT AND LITERARY PROPERTY—*continued.*
newspaper, copyright in, 147
headings of, copyright in, 146
name of, adoption of, restrained, 144
no copyright in, 144
place of publication, 147
registration of, 152
translations from, 150
nom de plume, adoption of, restrained though not copyright, 144
notice of intention to deliver lecture, 157
objections by defendant in action for infringement, 168
reservation of performing right (of musical composition), 177
novel, dramatisation of, 183
obscene works, no copyright in, 191
official books, copyright in, 173
ordnance maps, copyright in, 173
owners (part) of copyright, position of, 160
paintings, copies of, copyright in, 194
copyright in, 191
after sale, 193
(executed on commission), 193
importation of, 200
registration of, 195
parliamentary papers, copyright in, 173
"passing off," 143
penalties for infringement of copyright, 169
performing right in dramatic pieces and musical compositions, 175—188
before publication, 175
meaning of, 176
period (statutory) of copyright in artistic work, 190
literary work, 140
paintings, drawings and photographs, 192
prints, engravings and lithographs, 201
sculpture, models and casts, 207
international copyright, 140
performing right in dramatic pieces and musical compositions, 179
periodical works, copyright in, 147
"person aggrieved," extent of term, 156
personal property, copyright is, 140
phonographic records, 143
photograph, author of, who is, 194
copies of, copyright in, 194
copyright in, 191
after sale, 193
(executed on commission), 193
importation of, 200
registration of, 195
unauthorised publication of copies of, 190
piracy, 163
"pirated copies," meaning of term, 170
of musical compositions, 170
place of abode, meaning of, 153
plans, registration of, 144
prelude, addition of, to non-copyright melody, 186
print, definition of, 201
prints, engravings and lithographs, 200—206
author of, who is, 200
collection of, published in volume, is a book, 206
copyright in, meaning of, 201
requisites to, 202
infringement of copyright in, 203
registration of, not prescribed by English law, 202
profit-sharing agreements, 162
proprietor of copyright, meaning of, 153
print etc., meaning of, 202
protection of interests acquired prior to 1887...171
publication of dramatic pieces, 177
literary work, 139

COPYRIGHT AND LITERARY PROPERTY—*continued.*
publication of musical compositions, 177
painting, drawing or photograph, 189
sculpture, models and casts, 207
publish, failure to, *quantum meruit* on, 148
publisher, agreement with author by, 162
meaning of, in article, 148
(for purposes of registration), 153
rights of, 148
"publishing agreement," nature of, 161, 162
quantum meruit, where publisher fails to publish, 148
quotations, how far an infringement, 147
register at Stationers' Hall, alteration of, 156
false entries in, 157
restoration of expunged entry, 156
searches and inspections, 155
registration of book, 152
extent of, 155
who may be registered, 155
charts, 144
dramatic pieces, 178—180
maps, 144
musical compositions, 179, 180
published abroad, 181
new edition of book, 154
newspapers, 152
printers and publishers, 154
paintings, drawings and photographs, 190, 195
plans, 144
prints, engravings and lithographs, not prescribed by English law, 202
published as a book, 190
reprints, 154
sculpture, models, and casts, not prescribed by English law, 207
serials, 154
(colonial), of dramatic piece, 180
musical composition, 180
(foreign), of dramatic piece, 180
musical composition, 180
refusal of copyright, in what cases, 144
reports of lectures, 151
reprints, registration in case of, 154
restoration of expunged entry, 156
reviews, copyright in, 147
royalties, second assignee of copyright, how far bound to pay, 160
sculpture, models and casts, 206—208
article of sculpture, meaning of term, 207
author of, who is, 206
copyright in, essentials to, 207
sale of, 207
registration of, not prescribed by English law, 207
search warrant, in cases of piracy, 171
searches and inspections of register, as to, 155
"separately published," meaning of, 142
serial stories and tales, international copyright in, 149
registration of, 154
song, when a dramatic piece, 183
speeches, copyright in, 150
"subjects," who are included in, 138
time for registration of literary work, 153
time-tables (railway), copyright in, 145
title of a book, when the subject-matter of copyright, 143
translations, copyright in, how acquired, 149
from newspapers etc., 150
of serial stories, 150
Trinity College, Dublin, delivery of copies to, 175
union constituted by the Berne Convention, countries belonging to, 139
university copyright, 174
unpublished works, rights at common law in, 136
of foreign authors in, 138

CORONERS,
accident, inquests in case of death resulting from, 244
accounts of coroner, 294
actions against coroner for judicial acts, 256
adjournment of inquest, 270
Admiralty coroner, 231
deputy, 233, 234
judge of Admiralty court, used to be, 232
jurisdiction of, 233
admissions before coroner, admissibility of, 292
appointment of Admiralty coroner, 231
borough coroners, 225
coroner of King's household, 230
county coroners, 215
deputy coroner, 236
franchise coroner, 229, 234
King's coroner and attorney, 229
arrest, freedom from, of coroner, 250
arson, verdict of, 297
asylum, deaths in, 242
attendance of witnesses, how compelled, 265
attestation in inquisition, 277
bail, upon inquisition charging manslaughter, 289, 290
murder, 290
borough, jurisdiction of county coroner, within, 220
possessing right to appoint coroner, 225
borough coroners, 225—228
appointment of, 225
mode of, 226
fees of, 227
jurisdiction of, 226
qualification for, 226
removal of, 228
return of inquests by, 296
salary of, 227
special fee of, 227
burial of body, 272
person *felo de se*, 273
order for, 271
caption, nature of the, 274
certificate of coroner, 271
for cremation, 273
correction of error in, 272
classification of coroners, 212
committal for contempt, coroner's power of, 259
of witness refusing to attend, 267
costs of inquest, 293
when imposed on coroner, 255
county coroners, 212—225
appointment of, county borough, in case of, 218
procedure on, 215
district being in two administrative counties, 217
districts of, assignment of, to coroners, 214
division of counties into, 212
existing in 1844...215
order in council dividing county into, 214
petition for creation of, 214
expenses of coroner, repayment of, 224
fees of, 222
fees of coroner (acting as sheriff), 224, 249
jurisdiction of coroners, extent of, 219
outside district, 221
within boroughs, 220
justice of peace, as, 251
procedure on appointment of coroners, 215
qualifications of coroner, 218, 219
removal of, from office, 224
salary of, 222

CORONERS—*continued.*
county coroners—*continued.*
sheriff's substitute, as, 248
travelling allowances of, 223
county, meaning of, 212, 217
court of coroner, court of record, is a, 211
method of opening, 262
cremation after notice of inquest, 264
certificate for, after inquest, 273
deodand, meaning of, 279
depositions at coroner's inquest, 267
before coroners, admissibility of, on trial for murder or manslaughter 291
in inquests on fires in the City of London, 296
deputy coroners, 236, 237
appointment of, 236
jurisdiction of, 236
to franchise coroner, 237
disinterment of body, 263
drowned person, inquest in case of, 243
drunkards (habitual), inquests in case of, 243
Durham, ward in, is deemed a coroner's district, 218
duties of coroners, 237—250
inquests on treasure trove, 247
super visum corporis, 239
judgment in outlawry, pronunciation of, 250
sheriff's substitute, as, 248
evidence at inquest, 264
of jury, 265
publication of, 267
quashing of inquisition for misreception etc. of, 285
exemption from service on coroner's jury, 261
ex officio coroners, 212
expenses, payment of, by coroner, 294
to coroner, 294
explosives, inquest in case of death resulting from, 245
extortion or corruption, removal of coroner for, 252
fees of borough coroner, 227
county coroner, 222
(as sheriff substitute), 249
franchise coroner, 235
medical witnesses, 293
fine for failure to attend as witness 265
serve on coroner's jury, 260
imposition of, on coroner, 253
franchise, a, cannot be made into a county district, 213
coroner, 228—237
appointment of, 229, 234
definition of, 228
deputy of, 237
removal of, 235
remuneration of, 235
definition of, 229
high seas, jurisdiction in matters arising upon, 221, 233
history of office of coroner, 210
inability of coroner, 253
infant (nurse child), inquest in case of, 242
"relatives" of, who are, 243
information to coroner, duty to give, 240
infra corpus comitatus jurisdiction, 233
inquest, 256—296
accident in factory, in case of death resulting from, 244
mines, in case of death resulting from, 245
(railway), in case of death resulting from, 244
adjournment of, 270
admission to, 258
attendance of counsel etc. at, 258
delay in holding, 240
detached parts of counties, held in, 295

CORONERS—*continued.*
inquest—*continued.*
drowned person, in case of, 243
expenses of, as to payment of, 294
explosions, in case of death resulting from, 245
fees and allowances, 293
of medical witnesses, 293
infants taken in to nurse, in case of, 242
licensed premises, on, 257
lunatics, in case of, 242
on fires in the City of London, 296
depositions, 296
power to view premises, 296
verdict of arson, 297
in treasure trove, 247
place of holding, 256
refusal to hold, 241
retreat, in case of persons detained in a, 243
returns of, by borough coroner, 296
right to hold, 239
Sunday, not to be held on, 258
super visum corporis, 239
when to be held, 239
without view of the body, 264
witnesses and evidence at, 264
inquisition, the, 273—292
amendment of, 280
arraignment upon, after trial on indictment (and *vice versâ*), 292
attestation in, 277
caption, the, 273
custody and filing of, 279
execution, subsequent to an, 273
form of, 273, 277
murder or manslaughter, charging, 288
bail in case of, 289, 290
delivery of, to court, 290
right of accused to copies of, 291
nature of, 273
quashing of, 283
effect of, 286
practice, 286
second, 287
traverse of, 279
verdict in, 276
jurisdiction, high seas, in matters arising upon, 221
of Admiralty coroner, 233
borough coroner, 226
county coroner, 219
deputy coroner, 236
within prisons, 227
the verge, 221
jury, exemption of coroner from service on, 250
of coroner, 259—263
fine on failure to attend, 260
number of, 262
oath of, form of, 263
persons exempted from service on, 261
prohibited from serving on, 260
qualification of jurors, 261
return of defaulters to assizes, 260
swearing of, 262
King's household coroner, 231
verdict of, 270
King's coroner and attorney, 229
duties of, 230
history of, 229
King's household, coroner of the, 230
duties of, 231
jury of, 231

CORONERS—*continued.*
Lands Clauses Act, substitution of coroner for sheriff under, 249
liabilities of coroner, 251—256
damages for acts in excess of jurisdiction, 256
fines and costs, to payment of, 255
penalties under special statutes, to, 256
removal for misbehaviour or inability, 251
solicitor, inability to act as coroner and, 255
liberty, a, cannot be made into a county district, 213
licensed premises, inquests in, 257
Lincolnshire, divisions of, are counties for purposes of Acts relating to coroners, 217
London, buildings in, for unidentified bodies, 257
coroner's districts in, 212
inquests on fires in the City of, 296
lunatics, inquest in case of, 242
"lunatics, institution for," meaning of, 242
medical witnesses, 268
fees of, 293
mine accidents, inquest in case of death resulting from, 245
misbehaviour, removal of coroner for, 254
order for burial, 271
Order in Council dividing county into districts, 214
origin of term "coroner," 211
outlawry, judgment in, form of, 250
pronunciation of judgment devolves on coroner, 250
petitions for creation of coroners' districts, 214
post-mortem examinations, 268
prison, as to deaths in, 241
jurisdiction within, 227
privileges of coroner, 250
property qualification of county coroners, 219
qualification of borough coroner, 226
county coroner, 218
jurors, 261
quashing of inquisition, 283
railway accident, inquest in case of death resulting from, 244
recognisance to appear for trial, form of, 289
prosecute and give evidence, form of, 288
refusal to hold inquest, 241
relatives of an infant, who are, 243
removal of body for examination, 269
borough coroner, 228
coroner for misbehaviour or inability, 251—255
county coroner from office, 224
franchise coroner, 235
"retreat," meaning of term, 243
salary of borough coroner, 227
county coroner, 222
remedy for non-payment of, 223
franchise coroner, 235
seals on inquisition, 277
signature to inquisition, 277
solicitor-coroner, 255
super altum mare jurisdiction, 233
travelling allowances of county coroner, 223
traverse of inquisition, 279
treasure trove, definition of, 247
inquests on, 247
unidentified bodies, buildings in London for, 257
venue should appear in the inquisition, 274
verdict in inquisition, 276
of arson, 297
jury, 270
verge, jurisdiction within, 221, 230
view of the body, inquest without, 264
necessity of, 263
what constitutes a, 264
witness, arrest of (refusing to attend), 267

CORONERS —*continued.*
witness, attendance of, how compelled, 265
persons in custody as, 266
medical, 268
who may be examined as, 264
witnesses at inquest, 264—268
workhouse, death of lunatic in, 242
writ, *de coronatore eligendo*, form of, 216
Yorkshire, ridings of, are counties for purposes of Acts relating to coroners, 217

CORPORATIONS,
acceptance of charter, 316
office, 327
acquiescence, effect of, on contract invalid through want of seal, 381
acquisition of land by corporation, 371
action against corporation to restrain from *ultra vires* act, 364
individual members for acts done in corporate capacity does not lie, except on proof of malice, 386
adjournment of meeting, 348
administration of estates of deceased persons by corporations, 357
agent, appointment of, must be under seal, 381
to do ordinary services does not require seal, 382
alienation of land by corporations, 375—377
amalgamation of corporations, 364
amendment of resolutions, 348
amotion, 330—334
after indictment and conviction, 331
appeal to visitor on, 333
at adjourned meeting, 332
by election to incompatible office, 332
surrender of charter, 331
cause of, 331
definition of, 324
effect of, 333
inability as a cause of, 331
non-user as a cause of, 331
power of, construction of, 331
without previous conviction, 331
"ancient usage and custom," meaning of, 313
appeal to visitor on amotion, 333
appointment by election by corporation, 382
assurance of land to corporations, 367
enrolment of, 369
"assurance," meaning of, in Mortmain and Charitable Uses Act, 1891...367
attachment of officers of company, 396
bankruptcy, proof in, by corporation, how effected, 393
bills of exchange, powers of corporations as to, 361
bishop (Roman Catholic) is not a corporation sole, 306
bodies which are not, 302
bona vacantia, vesting of personal chattels held in trust for an extinct corporation as, 401
borrowing powers of a corporation, 362
list of methods of obtaining loan, 363
breaches of trust by corporation, 367
bye-laws, ambiguous, as to, 338
certainty of, 338
extent of power to make, 334
for regulation of trade, 338
inflicting imprisonment, invalidity of, 340
interpretation of, 337
meaning of term, 334
penalties for breach of, 339
power of a majority of parishioners to make, 335
select body to make, 335
proof of, 340
reasonableness of, 337
repugnancy of, 338
usage, how far evidence of, 340

CORPORATIONS—*continued.*
bye-laws, validity of, 336
casting vote, 349
charter, acceptance of, 316
declared void by Act of Parliament, validity of acts done under, 401
forfeiture of, 397
for transgression of limits, 359
granted during reign of James II., 319
interpretation of, 317
new, 318
revocation of, 398
surrender of, dissolution by, 397
chartered corporations, 314
common informer, corporation cannot be a, 357
law corporations, 314
compromise, when valid though not under seal, 384
construction of general powers, 360
special powers, 361
continuity essential to existence of corporation, 302
contract by corporation, acquiescence, effect of, 381
formalities of, 379
in furtherance of application to Parliament for extension of powers, 358
part performance of, 383
ratification of, after incorporation, impossible, 379
before contract broken or repudiated, 381
seal, necessity of, 380
where contract executory, 385
for purposes unconnected with object of corporation, 385
urban authority under Public Health Act, 1875...386
seal, when not necessary to, 382—385
specific performance of (seal absent), 385
trading corporations, in case of, 383
ultra vires, 359
variation of, in detail, by agent, 381
with members, 380
contracts with corporations sole, devolution of benefit of, 380
copyholds, ownership of, by corporations, 372
tenancy of, by corporations, 372
corporation, aggregate, capacity of, 305
definition of, 301
delivery necessary to deed of, 309
members of, title to parliamentary vote, 374
seal of, 309
change of, 309
rights and duties of custodian of, 311
use of—380—386
use of corporate name by, 307
by charter, 314
common law, 314
prescription, 321
statute, 320
created by the Crown for a limited period, 301
sole, as parliamentary elector, 374
capacities of, 306
creation of, by letters patent, 314
definition of, 302
examples of, 305
"successors" necessary to grant of land to, 371
use of baptismal name by, 307
covenants in lease, successors of corporation sole, how far bound by, 375
creation of corporations, by Crown, 314
essentials of, 313
modes of, 313
statutory corporation, 320
criminal liability of corporations, 390
breach of statutory duty, in case of, 391
libel, in cases of, 391

CORPORATIONS—*continued.*
criminal liability of corporation—*continued.*
mens rea not essential, in cases where, 391
nuisance, in cases of, 391
Crown, entry by, on land alienated in mortmain, 369
dentist, corporation cannot act as a, 358
deputies of officers, 329
disfranchisement, 324
causes of, 325
definition of, 324
dissolution of corporation, 397—401
by absence of integral part, 399
forfeiture, 397
insufficiency of members, 399
legal proceedings, 400
revocation, 398
surrender, 397
effect of, 401
on leaseholds not assigned, 373
parting with all property does not necessarily effect a, 397
domicil necessary to existence of corporation, 311
Duchy of Lancaster, charter under seal of, cancellation of, 401
duty, corporation, 378
easement, grant of, by corporation, 376
ecclesiastical corporations, 304
visitation of, 355
election, delegation of right of, 352
mode of, 354
obtained by fraud, as to, 353
of members and officers, 350
persons not members, participating in, 352
proceedings at, 354
quorum necessary to a valid, 351
returning officer, duties of, 355
time for, 354
to incompatible office, effect of, 332
validity of, 355
who may take part in, 351
eleemosynary corporation, definition of, 304
visitation of, 355
elegit, writ of, to enforce judgment, 396
enrolment of assurance to corporation, 369
surrender of charter, 397
entry by Crown on land alienated in mortmain, 369
lord on land alienated in mortmain, 368
estate duty, liability of corporations to, 378
estoppel is applicable to corporations, 356
executory contracts, seal necessary to, 385
fieri facias against corporation, 396
foreign corporation, registration of persons to accept service, 393
suits by and against, 393
when resident in England, 312
forfeiture, dissolution by, 397
of office, effect of, 330
founder of a corporation, meaning of, 334
franchise, 313
reverter of, to Crown, 401
seizure of, 398
vesting of, in corporation, 377
frankalmoign, tenure of, 373
fraternity, definition of, 315
fraud, effect of, on election, 353
Freemason's lodge is not a corporation, 303
friendly society, corporation cannot be treasurer of, 358
grant of easement by corporation, 376
land to corporation aggregate, 371
not in existence, 373
sole, 371

CORPORATIONS—*continued.*
government of corporations, 325—356
appointment of officers, 325
bye-laws, 334
effect of usage, 340
election of members and officers, 350
external government, 355
meetings, 341
proceedings at, 345
officers, powers and duties of, 329
vacation of office by, 330
penalties, 339
quorum, 343
statutory regulations, 341
visitation, as to, 355
voting, 348
guild, incorporation by grant of, 315
head of corporation, necessity of his presence at meeting, 344
need not be one of the majority, 346
hospital, legal meaning of word, 315
income tax, extent of liability of corporation to, 377
incompatible offices, meaning of, 332
incorporation by grant of guild, 315
information against corporation for *ultra vires* act, 364
Inns of Court not corporations, 303
inquisition as to alienation in mortmain, 369
inspection of books by corporators, 323
interpretation of bye-laws, 337
charter, 317
word "person," 357
interrogatories, 395
judgment, enforcement of, against corporation, 396
of ouster, effect of, 333
King, vesting of lands in, as corporation sole, 374
land, acquisition of, by prescription, 372
corporation, 371
during vacancy of headship, 372
alienation of, by corporations, 375—377
statutory corporation, 376
assurances of, to corporations, 367
grant of, to corporation aggregate, 371
sole, 371
"land" meaning of, in Mortmain and Charitable Uses Act, 1891...367
lay corporation, 304
leaseholds, grant of, to corporation, 371
leases by corporations, 375
legacy duty, liability of corporations to, 378
legal majority, meaning of, 345
proceedings by or against a corporation, 392—397
actions against corporations, 393
appearance by solicitor, 395
foreign corporations, 393
by corporations aggregate, 392
sole, 392
foreign corporations, 393
death of member has no effect on suit by corporation aggregate, 392
examination of member to prove debts and property of corporation, 397
individual members, proceedings by, 395
against corporation, 395
interrogatories, 395
penalty not provided for breach of statutory duty, in cases where 393
procedure, 395—397
proof in bankruptcy by corporation, how effected, 393
security for costs, by plaintiff limited company, when directed, 392
service of writ, 395.
letters patent, grant of licence in mortmain by, 370
liability of corporation to taxation, 377
liberty, seizure of, 398
licence in mortmain, 367

CORPORATIONS—*continued.*
licence in mortmain—*continued.*
extent of, 370
how obtained and granted, 370
limitation of powers of corporations, 359—365
"local authority," definition of, in Mortmain and Charitable Uses Amendment Act, 1892...368
maintenance, corporation aggregate cannot be guilty of, 387
majority (legal), meaning of, 345
restriction on powers of, 346
malice, essential to action against individual members for acts in corporate capacity, 386
mandamus to enforce judgment against corporation, 396
meetings, 341—355
adjournment of, 348
casting vote at, 349
convention of, 341
elections of members and officers at, 350
notice of, 341
presence of the head necessary at, 344
presiding officer, duties of, 347
proceedings at, 345
quorum, the, 343
resolutions at, 348
must be clear and unambiguous, 348
voting at, 348
members of corporation, 322—325
insufficiency of, effect of, 399
qualification of, 322
rights of, as against corporation, 323
suits by, 394
minority, rights of, at meeting, 347
misnomer of corporation, effect of, 308
mortmain, 367—371
alienation in, conditions as to, validity of, 370
effect of, 369
licence in, 369, 370
Mortmain Acts, exceptions to, 368
museum, definition of, 368
name essential to existence of corporation, 306
of corporation, change of, 307
nature of corporation, shown by contrast with individuals comprising it, 302
new charters, 318
non-trading corporations, classification of, 304
non-user as a cause of amotion, 332
office, acceptance of, 327
forfeiture of, effect of, 330
incompatible, 332
tenure of, 328
officers, amotion of, 330
appointment of, 325
deputies of, 329
personal liability of, for *ultra vires* act, 365
powers and duties of, 329
ouster, judgment of, effect of, 333
ownership of property by corporation, 365
(trust) of property by corporation, 365
part-performance by corporation of contract not under seal, effect of, 383
penalties, enforcement of, 339
demand and refusal to pay, necessary before, 340
in enforcement of bye-laws, 339
"person," how far a corporation is a, 357
personalty, powers of corporation, 377
poll, demand for, 349
how taken, 348
poll-book, inspection of, 324
Postmaster-General is a corporation sole, 305
powers and liabilities of corporations, 356—397
(general) of corporations, construction of, 360

CORPORATIONS—*continued.*
powers, notice of limitation of, 361
of corporation as to bills of exchange etc., 361
(special) of corporations, construction of, 361
prebend, how constituted, 314
prescription, evidence of, 321
presiding officer, duties of, 347
private corporation, meaning of, 334
probate grant of, to corporations, 357
procedure, interrogatories, 395
judgment against corporation, enforcement of, 396
writ of summons, address should be that of head office, 395
appearance by liquidator, 395
entered by solicitor, 395
served on whom, 395
promissory notes, powers of corporation as to, 361
proxies, 350
public corporation, meaning of, 334
trustee is a corporation sole, 305
quasi-corporations, instances of, 304
quo warranto, dissolution by judgment in, 400
proceedings for usurpation of office, 333
relator, joining of, with Attorney-General in action, 364
repugnancy of bye-laws, 338
residence of corporation, 312
resignation of head of corporation, 332
resolutions, amendment of, 348
must be clear and unambiguous, 348
restoration after amotion, 333
of corporator illegally disfranchised, 325
returning officer at election, duties of, 355
reverter of franchises to Crown, 401
to grantor of lands on dissolution of corporation, 373
revocation of charter, 398
rogue and vagabond, corporation cannot be convicted as a, 358, 391
scire facias, dissolution by, 400
seal of corporation, 309
appointments not requiring, 382
compromise, when not necessary to validity of, 384
contract by urban authority under Public Health Act (exceeding £50), necessary to, 386
for purposes unconnected with object of corporation, necessary to, 385
consideration completely executed and work necessary to purpose of corporation, in cases of, 384
executory contracts, always necessary to, 385
express powers to contract without, 382
necessity of, in contracts by corporation aggregate, 380
seisin of corporation, 373
to a use, impossible, 373
King, 374
sequestration for disobedience to judgment, 396
shareholder, corporation as, in another corporation, 364
solicitor, appointment of, must be under seal, 381
specific performance of contract (seal wanting), 385
Statutes of Limitation, application of, to corporations, 356
not suspended by corporation sole falling vacant, 356
statutory corporation, 320
alienation of land by, 375
distinguished from non-statutory, 358
subrogation, none of lender in excess of borrowing powers to securities of creditors paid off, 363
succession duty, liability of corporations to, 378
"successors," necessity of word in grant to corporation sole, 371
suits by and against corporations, 393—397
summary jurisdiction under specially indorsed writ against corporation, 395
superfluous lands, charge on, by statutory corporation, 376
surrender of charter, dissolution by, 397
taxation of corporations, 377

CORPORATIONS—*continued.*
tenant from year to year, corporation when a, by implication, 384
tenure of office, 328
torts, against corporation, 390
by corporation, 386—390
fraudulent representations as to credit, 387
in exercise of common law duties, 390
statutory powers, 388
presumption arising from absence of provision as to compensation, 389
liability of corporations aggregate, 386
maintenance, 387
trading corporations, classification of, 304
contracts by (with respect to use of seal), 383
seal of, use of, 311
Treasury solicitor is a corporation sole, 305
Trinity House is a corporation, 304
trust, breaches of, by corporation, 367
ownership of corporations, 366
trustee for charitable purpose, corporation as, 366
trustees, interposition of, to hold copyholds for corporation, 372
ultra vires act, 359—365
how corporation restrained from, 364
contract void *ab initio*, 359
double meaning of term, 359
usage, as evidence of bye-laws, 340
definition of, 318
visitation of corporations, 355
voluntary society having no constitution, 303
vote (parliamentary) right to, of members of corporation aggregate, 374
voting, for unqualified person, 353
mode of, 348
poll, 348
proxies, 350
waiver of powers of corporation, 360
writ of privy seal, grant of licence in mortmain by, 370
summons, 395

COUNTY COURTS,
abandonment of excess, entry of, on particulars, 460
account of sale of goods taken in execution, 566
particulars, where account is claimed, 466
accounts and inquiries, 540—546
account books as evidence, 542
of personal estate, 542
addition of necessary parties, 541
advertisement for creditors, 543
certificate of registrar, 544
costs of creditor, 544
evidence of claims, 543
interest on legacies, 544
late claims, 544
notice of allowance of claims, 543
numbering of accounts, 542
proof of claims, 542
representation of class interests, 541
summons to attend proceedings, 541
verification of accounts by affidavit, 542
accounts of parliamentary returning officers, statutory jurisdiction as to, 673
receiver, 505
action, cause of, division of, 459
place of arising, determination of, 451
causes of, different, what are, 459
joinder of, 458
commencement of, 448
abandonment of excess, 459
joinder of causes of action, 458
discontinuance of, 500
leave to commence, 450

COUNTY COURTS—*continued.*
action, parties to, 453
selected, 481
transfer of, 482
for trial under extended jurisdiction, 483
acts conferring jurisdiction on county courts, 410
adjournment, by judge, 528
of trial to summon jury, 521
through unavoidable absence of judge, 413
advertisement for creditors etc., on taking accounts and inquiries, 553
advertisements, 620
administration action, particulars in, 467
order, effect of, on execution, 562
proceedings, venue in, 452
administrator, judgments for and against, 546
admission by any party, 502
evidence of, 503
of truth of particulars, 501
affidavit, 518—520
application by, for leave to issue execution, 554
by person paying in trust moneys, 498
costs of, when disallowed, 519
evidence, 531
filing of, 519
form of, 518
of documents, 514
indebtedness of garnishee, 571
plaintiff's want of means (remitted actions), 442
sufficiency of sureties for costs, 601
swearing of, 518
title of, 519
verifying accounts, 542
admission of truth of particulars, 501
amendment, 508—513
by abandonment of part of claim, 509
judge, 528
of defence, 508
particulars, 508
parties, 509
plaintiff appearing to be entitled to more than claim, 509
appeal, 601—615
against order granting or refusing new trial, 550
to remit action, 441
amendment of grounds of, 606
cases in which no appeal lies, 603
certiorari on refusal of order of, to Court of Appeal, 611
costs of, 609
security for, 606
counsel, number of, heard, 608
cross-appeal, 606
death of party, effect of, 608
definition of, 601
from decision of compensation board under Brine Pumping Act, 1891...631
divisional court, 609
hearing of, 607
in action under extended jurisdiction, 607
contract cases, 601
ejectment and actions of title, 602
interlocutory matters, 602
interpleader, 602
recovery of tenements, 602
replevin, 602
tort cases, 601
judgment of Court of Appeal, deposit of, 610
leave to appeal, when given, 604
lies to divisional court of King's Bench Division, 607
note, non-production of, effect of, 608
request to take a, not a condition precedent, 604
signature of copy of, by judge, 605

COUNTY COURTS—*continued.*
appeal—*continued.*
notice of motion, must be by, 605
on point of law lies when, 601
powers of High Court on, 608
prescribed form, neglect to use, not entertained on, 618
procedure leading to, 604
prohibition being a concurrent remedy, 604
raising point of law, a condition precedent, 604
stay of proceedings, when a, 606
time for, extension of, 606
under Alkali etc. Works Regulation Act, 1906...632
Building Societies Act, 1874...639
Charitable Trusts Acts, 1853 to 1891...642
Commons Act, 1876...644
Court of Probate Acts, 1857 and 1858...646
Finance Act, 1894, s. 10...649
Friendly Societies Act, 1896...653
Guardianship of Infants Act, 1886...654
Inebriates Acts, 1879 to 1899...660
Married Women's Property Act, 1882...671
Parliamentary Elections (Returning Officers) Act, 1875...673
Rivers Pollution Prevention Acts, 1876 and 1893...682
special statutes, 603
Succession Duty Act, 1853...687
Telegraph Acts, 1863 and 1878...690
writ of *certiorari*, 610
prohibition, 611
application for directions, 506
in remitted equitable actions, 443
to set aside proceedings for irregularity, 617
appointment of bailiffs, 421
deputy of judge, 416
registrar, 419
guardian *ad litem*, 479
judge, 414
registrar, 417
arbitration, 525
arbitrator under Agricultural Holdings Act, 1908...625
removal of, 625
setting aside award of, 625
stating a case by, 625
assault on officers of court, 427
assessors, 523—525
application for, 523
consent to act, 523
list of, 523
remuneration of, 523
assignment of cause of action, cause of action arises where, 452
attachment of debts, 570
partnership debts, 576
bailiff. *See also* officers of court.
duties of, 422
high, appointment of, 421
salary of, 422
liabilities of, 425
indorsement of false statement by, 426
special, 421
bailiffs, jurisdiction of county courts as to, 661
bill of exchange, cause of action arises where, 452
Bills of Exchange Act, 1855, defence under, 489
jurisdiction under, 447
summons under, 479
bills of sale, transmission of abstract of, by registrar, 623
breach of promise of marriage, county court has no jurisdiction in, 432
warranty, cause of action arises where, 451
brokers and appraisers, 565
building societies, statutory jurisdiction as to, 637
buildings in London, statutory jurisdiction of county courts as to, 668

COUNTY COURTS—*continued.*
buildings, provision of, for holding of court, 414
"carry on business," meaning of, 449
certificate, application to vary, 545
of bailiff, 661
Charity Commissioners authorising legal proceedings, 640
judge for costs on higher scale, 581
judgment, 536
registrar of result of accounts and inquiries, 544
certiorari, 610
challenge of jury, 533
Chancellor's court in Oxford and Cambridge not affected by establishment of county courts, 412
charities, jurisdiction of county court with respect to, 640
City of London court, 412
commencement of action, 448
committal for disobedience of order, jurisdiction, 433
commons, inclosure or encroachment upon, jurisdiction of county courts as to, 644
company, service of summons on, 476
compensation for damage by riot, as to, 680
subsidence due to pumping of brine, 636
under Agricultural Holdings Act, 1908...625
compromise in trust actions, 455
confession and admission of debt, 501
of title in ejectment or recovery of possession, 502
consent of assessors to act, 523
consents by guardians and committees, 455
consolidation of actions, 481
contempt of court, 615
contract, jurisdiction in remitted actions of, 439
contribution, 491
corporation "dwells" where its principal business is conducted, 450
service of summons on, 471
Corrupt and Illegal Practices Prevention Act, 1883, claims under, 624
costs between party and party, 583
solicitor and client, 585
certificate of judge for costs on higher scale, 581
counsel employed but costs of counsel not allowed, 584
counsel's fees, 594
counterclaim tried, 593
discretion as to particular items, 582
of court, 578
guardian *ad litem*, limit of his responsibility for, 480
of action for special damage against landlord, 582
struck out for want of jurisdiction, 579
administration actions, 589
affidavit, when disallowed, 519
appeal, 609
certiorari, 611
consent actions, 594
creditor establishing debt in taking accounts and inquiries, 544
detinue, 591
discovery, security for, 515
ejectment and real property actions, 591
entering plaint by solicitor, 584
equitable actions and matters, 588
experts, 596
garnishee proceedings etc., 572, 575
injunctions, 592
interlocutory proceedings, 592
interpleader or equity proceedings remitted, 586
parties not employing a solicitor, 583
party succeeding on some issues, 580
suing or defending *in formâ pauperis*, 583
payment in of trust moneys, 498
plans, drawings, etc., 596
proceedings by executors and administrators, 594
under Agricultural Holdings Act, 1908...631
Ballot Act, 1872...636

COUNTY COURTS—*continued.*
costs of proceedings under Charitable Trusts Acts, 1853 to 1891...643
Court of Probate Acts, 1857 and 1858...646
Enclosure etc. Expenses Act, 1868...657
Licensing Act, 1904...664, 665
Local Loans Act, 1875...667
Lunacy Act, 1890...670
Open Spaces Act, 1906...672
Partition Acts, 1868 and 1876...675
Riot (Damages) Act, 1886...680
Rivers Pollution Prevention Acts, 1876 and 1893...682
Settled Land Acts, 1882 to 1890...684
Telegraph Acts, 1863 and 1878...690
Tithe Act, 1891...691
Trustee Act, 1893...692
production of unnecessary documents on notice, 516
public authority, 585
receiver by way of equitable execution, 589
under Partnership Act, 590
recovery of small tenements, 592
remitted actions, 586
special items allowed, 588
seamen as witnesses, 596
security for costs, 600
solicitor (plaintiff or defendant), 584
special items under equity jurisdiction, 589
taxation of parliamentary returning officer's accounts, 674
unnecessary matter, disallowance of, 583
warrant of execution, 556
on discontinuance of action, 500
judgment in selected action, 482
non-appearance, 579
of plaintiff, 526
payment into court, 495
refusal to admit facts, 593
payment into court, after, 593
recovery of, 600
scales of, 580
security for, 600
defendant residing at a distance and disclosing a good defence, 600
plaintiff being out of jurisdiction, 461
special items in case of counsel's fees, 594
ejectment and real property actions, 591
order as to particular items, 582
taxation of, 597—599
delivery of bill where costs to be paid out of fund, 598
discretion of registrar, 597
in High Court of county court costs, 599
interlocutory applications, 599
notice of, 598
review of, 599
set-off of costs on, 598
time for, 598
third parties, where there are, 590
treble costs, 580
under extended jurisdiction, 590
undertaking as to, by next friend, 464
witnesses' allowances, 595
counsel's fees, allowance of, 594
counterclaim, 491
as to jurisdiction in, 433
payment into court in answer to, 495
court houses, provision of, 414
"court," meaning of, in Public Trustee Act, 1906...679
of record, county court is a, 411
request, the basis of the statutory county court, 410
the Vice-Warden of the Stannaries not affected by county courts, 412
customs, judge's jurisdiction as to, 622
debt of several items, cause of action arises where, 451

COUNTY COURTS—*continued.*
default summons, 465
exchange of, for ordinary summons, 474
judgment on, 537
non-appearance of either party to, 527
notice of intention to defend, 487
service of, 473
evasion of, 473
striking out, 474
defence, 485—491
amendment of, 508
bankruptcy, 486
Bills of Exchange Act, 1855, under, 489
contribution, 491
counterclaim, 491
coverture, 486
disclaimer of interest, 488
Gaming Acts, 486, 487
in ejectment, by interested person not a defendant, 488
limitation of defence to a part, 489
indemnity, 491
notice of, 485
set-off, 491
Statute of Limitations, 486
to default summons, 487
defendants, who may be joined as, 454
deposit of judgment of Appeal Court, 610
payable for jury, 521
depositions before examiner, 517
deputy of judge, 416
registrar, 419
detinue, jurisdiction in, 428
directions, application for, 506
further, to officers of the court, 507
discharge of person in custody for contempt, 578
disclaimer of interest by defendant, 488
discontinuance of action, 500
discovery of documents, 514
"dispute," meaning of, in Industrial and Provident Societies Act, 1893...658
distress, statutory jurisdiction of county court as to, 661
districts of county courts, 411
division of cause of action, 460
document, loss or destruction of, 621
sealing of, 621
duplicate of document lost or destroyed, 621
"dwell," meaning of, 449
ejectment, defence in, by person interested not named as a defendant, 488
limitation of, to a part, 489
joinder of causes of action in, 458
jurisdiction in, 435
particulars in action of, 466
plaint in case of, 462
service of summons, 469
elections (municipal), county court's jurisdiction, 635
statutory jurisdiction of county court as to, 671
employers and workmen, disputes between, statutory jurisdiction of county court as to, 646
enfranchisement, statutory jurisdiction of county court as to expenses of, 656
entry of amount paid into court by garnishee, 575
judgment, 535
plaint, 460
equitable action, payment into court in, 496
(remitted), application for directions, 443
defence, notice of, 487
escapes, bailiffs' liability for, 425
estate duty must be paid, before payment out of court, 500
statutory jurisdiction of county court as to, 648
evidence, 513, 531
by affidavit, 531

COUNTY COURTS—*continued.*
evidence—*continued.*
depositions as, 518
discovery of documents, 514
documents as, 532
interrogatories, 513
subsequent use of, 532
examination of witnesses before trial, 516
examiner, examination of witnesses before, 516
report of, 518
execution, 550—570
after cross judgments, 552
against a partnership, 556
goods, 551
brokers and appraisers, 565
effect of administration order on, 562
notice of receiving order on, 563
goods which may be taken, 560
interpleader by high bailiff, 563
inventory of goods, 565
leave to issue, 553
limitation of time for issue of, 553
neglect to levy, bailiff's liability for, 425
out of the jurisdiction, 567
payment sufficient to supersede, 561
prior claims for rent and King's taxes, 564
priority of executions, 560
recovery of specific chattels, 569
sale under, 564
stay of, 560
warrant of, 552, 555
delivery of chattel, 569
possession, 568
executor, judgments for and against, 546
expenses of holding court, how defrayed, 414
explosions, investigation as to, under Explosives Act, 1875...622
factory, statutory jurisdiction of county court as to, 648
fair, questions as to, not within jurisdiction of county court, 431
fee on petition, 461
plaint, 461
fees, 613
on order for arbitration, 525
possession fees, 559
table of, as to, 618
filing of affidavits, 519
copies of documents for service, 619
depositions taken before examiner, 518
foreclosure, joinder of causes of action in, 458
"foreign" court, meaning of, 468, 472
"Foreign Executions Re-issued Book," 567
forms and rules, as to, 617
franchise, meaning of, 431
questions as to, not within jurisdiction of county court, 431
friendly societies, statutory jurisdiction of county court as to, 651
further directions to officers of the court, 507
garnishee summons, 570
Government annuities, statutory jurisdiction of county court as to, 653
guardian *ad litem*, appointment of, for infant or lunatic, 479
appointment of, under Agricultural Holdings Act, 1908...630
of infants, statutory jurisdiction of county court as to, 654
habitual drunkards, statutory jurisdiction of county court as to, 659
"home court," meaning of, 468, 472
hosiery manufacture, statutory jurisdiction of county court as to, 655
housing of the working classes, statutory jurisdiction of county court as to, 656
inclosure, statutory jurisdiction of county court as to documents relating to, 656
indemnity, 491
indorsement (false) by bailiff, 426
indorsements on summons, 475

COUNTY COURTS—*continued.*
industrial and provident societies, statutory jurisdiction of county court as to, 657
assurance societies, jurisdiction of county court as to, 643
inebriates, statutory jurisdiction of county court as to, 659
infant, appointment of guardian *ad litem* for, 479
as a party, 455
payment into court in case of, 497
service of summons on, 469
statutory jurisdiction of county court as to, 654
injunction, jurisdiction to grant, 433
order for, 504
instalments, payment by, 539
interlocutory applications and orders, 503
practice on, 507
matters, jurisdiction in, 432
interpleader by high bailiff, claim being made to goods taken in execution, 563
jurisdiction in, 434
remitted interpleader proceedings, 443
interpretation of words, 621
interrogatories, 513
answers to, 514
inventory of goods taken in execution and removed, 565
investment of money paid into court, 499
joinder of causes of action, 458
in claims by or against executor or administrator, 458
husband and wife, 458
trustee in bankruptcy, 459
joint and separate, 458
ejectment action, 458
foreclosure or redemption action, 458
replevin, 459
without leave, 458
parties, 453
judge, 414—417
appointment of, 414
deputy of, 416
disabilities of, 415
justice of the peace, judge may be, 415
liability of, for acts within scope of jurisdiction, 415
note on point of law by, 533
pension of, 417
powers of, at hearing, 528
precedence of, 414
qualification of, 414
removal of, 415
salary of, 417
two courts not to be held by same judge on same day, 413
unavoidable absence of, as to, 413
judgment, 533—548
accounts and inquiries, 540
against assets, 547
certificate of, 536
de bonis testatoris, si, et si non, de propriis, 546
deed ordered by, preparation of, 535
definition of, 533
delivery of, to bailiff, 537
directing act other than payment of money and costs, 536
sale of property, 536
real property, 536
entry of, 535
finality of, 534
for and against executors and administrators, 546
in action relating to land, 534
administration action, 534
injunction, inclusion of, in, 533
liberty to apply in equity matters, 536
no interest on, 535
non-suit, 538
notes of proceedings under, 537

COUNTY COURTS—*continued.*
judgment—*continued.*
of Court of Appeal, deposit of, with registrar, 610
on default summons, 537
payment by instalments, 539
registry of judgments, 547
removal of, into the High Court, 560
service of, on solicitor, 537
special, preparation of, 535
time for payment, 539
under Bills of Exchange Act, 1855...538
jurisdiction of county court, 429
by consent, 434
in cases of title, 435
exceptions to ordinary jurisdiction, 430
in appointment of receiver, 433
attachment of debts, 430
claims on balance of account, 429
committal for disobedience of order, 433
counterclaims, 433
detinue, 428
ejectment, 435
equity, 443
administration actions, 443
dissolution or winding-up of partnerships 445
distribute share under intestacy, 445
foreclosure etc., 442
fraud or mistake, 446
legacies, 445
maintenance etc. of infants, 445
specific performance, 444
trusts, 444
grant of, injunction, 433
mandamus, 433
interlocutory matters, 432
interpleader issues, 434
recovery of possession, 436
remitted actions, 438
equitable actions, 442
interpleader proceedings, 443
of contract, 438
tort, 441
replevin, 429
specific performance, 432
limits of, 411
objection to, 489
by justice of peace, 490
title being in question, 438
under Bills of Exchange Act, 1855
under special statutes, 622—693
Agricultural Holdings Act, 1908...625
Alkali etc. Works Regulation Act, 1906...631
Allotments and Cottage Gardens (Compensation for Crops) Act, 1887...633
Allotments Extension Act, 1882...634
Army Act, 1881...634
Ballot Act, 1872...635
Brine Pumping (Compensation for Subsidence) Act, 1891...636
Building Societies Act, 1874...637
Charitable Trusts Acts, 1853 to 1891...640
Collecting Societies and Industrial Assurance Companies Act, 1896...643
Commons Act, 1876...643
Court of Probate Acts, 1857 and 1858...644
Employers and Workmen Act, 1875...646
Extraordinary Tithe Redemption Act, 1886...647
Factory and Workship Act, 1901...648
Finance Act, 1894...648
Fines and Recoveries Act, 1833...650
Friendly Societies Act, 1896...651
Government Annuities Acts, 1864 and 1882...653

COUNTY COURTS—*continued.*
jurisdiction of county court—*continued.*
under special statutes—*continued.*
Guardianship of Infants Act, 1886...654
Highways and Locomotives (Amendment) Act, 1878...655
Hosiery Manufacture (Wages) Act, 1874...655
Housing of the Working Classes Acts, 1890 and 1903...656
Inclosure etc. Expenses Act, 1868...656
Industrial and Provident Societies Act, 1893...657
Inebriates Acts, 1879 to 1899...659
Judicial Trustees Act, 1896...660
Law of Distress Amendment Acts, 1888 and 1895...661
Licensing Act, 1904...662
Literary and Scientific Institutions Act, 1854...665
Loan Societies Act, 1840...666
Local Government (England and Wales) Act, 1888...678
Local Loans Act, 1875...666
London Building Act, 1894...667
Lunacy Act, 1890...669
Married Women's Property Act, 1882...670
Municipal Elections (Corrupt and Illegal Practices) Act, 1884...671
Open Spaces Act, 1906...672
Parliamentary Elections (Returning Officers) Act, 1875...673
Partition Acts, 1868 and 1876...675
Pharmacy Acts, 1852 and 1868...676
Poor Law Amendment Act, 676
Private Street Works Act, 1892...677
Public Health Act, 1875...677
(London) Act, 1891...677
Public Trustee Act, 1906...679
Riot (Damages) Act, 1886...680
Rivers Pollution Prevention Acts, 1876 and 1893...680
Sale of Exhausted Parish Lands Act, 1876...682
Settled Land Acts, 1882—1890...684
Small Dwellings Acquisition Act, 1899...685
Solicitors Act, 1870...686
Stannaries Court (Abolition) Act, 1896...686
Succession Duty Act, 1853...687
Telegraph Acts, 1863 and 1878...688
Tithe Act, 1891...690
Trustee Act, 1893...691
jurisdiction of registrar, 419
jury, 520—523
can be summoned when, 521
challenge, 533
deposit payable for, 521
notice of demand for, 521
payment into court not communicated to, 533
letters patent, grant of, not within jurisdiction of county court, 431
libel, county court has no jurisdiction in, 432
notice of intention to rely on fact of truth etc., 486
payment into court in action for, 495
remitted action of, 442
licence, compensation for non-renewal of, jurisdiction of county court as to, 662
statutory jurisdiction of county courts as to, 663
licensing question, reference by quarter sessions, 663
limitation of time for issue of execution, 553
limits of jurisdiction of county courts, 411
literary and scientific institutions, dissolution of, statutory jurisdiction of county courts as to, 665
loan societies, statutory jurisdiction of county courts as to, 666
loans under Poor Law Amendment Act, 1848...676
local jurisdictions, 412
loans, statutory jurisdiction of county courts as to, 666
loss of document, 621
lunatic as a party, 455
payment into court in case of, 497
property of, order for sale of, 669
service of summons on, 469

COUNTY COURTS—*continued.*
lunatic, reception order, 669
statutory jurisdiction of county court as to, 669
mandamus, 614
jurisdiction to grant, 433
order in nature of, 614
under special statute, 615
market, questions as to, not within jurisdiction of county court, 431
married woman as a party, 435
acknowledgments by, received by judge of county court, 653
entry of plaint by, 464
examination of, interested in funds in court, 499
meaning of county court, 621
metropolitan courts, 411
mine, inquiry into competency of manager, 622
mortgages etc., venue in case of proceedings as to, 452
new trial, 548—550
appeal against order granting or refusing, 550
entry of, for trial, 610
of actions transferred for trial under extended jurisdiction, 549
procedure on application for, 548
with jury, 548
non-appearance of defendant to default summons, 527
either party, 527
plaintiff, 526
non-suit, 538
note on point of law by judge, 533
notes of proceedings before registrar under judgments, 537
notice, form of, 621
of admission of claim, 502
allowance of claims in taking accounts and inquiries, 543
application for directions, 507
new trial, 549
order charging partner's interest, 557
redemption of partner's interest charged by judgment, 557
change of solicitor, 619
counterclaim, 485
defence, 485
demand for jury, 521
deposit of money in lieu of bond as security for costs, 601
employment (by solicitor), 619
equitable defence, 487
intention to defend default summons, 487
motion (appeal), 605
order made on hearing of a partition, 675
payment into court, 494
of money payable under judgment, 539
proposed sureties for costs, 600
rejection of affidavits, 520
setting down for trial, 507
posting of, 621
to Charity Commissioners of legal proceedings, 640
added or substituted defendant, 511
admit documents, 516
facts, 502
show cause against committal, 577
officer of court, action against officer acting under order of court, 426
by, removal of, 423
assault on, 427
further directions to, 507
irregularity or informality does not make him a trespasser, 426
not to act as solicitor, 423
protection of (generally), 426
remedies against, for misconduct, 423
rescue of goods from, 427
open spaces, statutory jurisdiction of county court as to, 672
order. *See also* judgment.
charging partner's interest, 556
directing arbitrator to state special case, 626

COUNTY COURTS—*continued.*
order—*continued.*
draft of, preparation of, 505
enforceable by attachment, 577
fees, as to, 618
for accounts and inquiries, 504
arbitration, 525
attachment, 577
attendance of witnesses and production of documents before examiner, 566
bringing up prisoner as witness, 530
for committal for contempt, 615
consolidation of actions, 482
detention, preservation, taking samples, making models etc. of subject-matter, 503
discovery of documents, 515
examination of debtor, 551
injunction, 504
instalments on unsatisfied judgment, 540
interrogatories, 514
payment into court of amount, in respect of which lien is claimed, 504
preservation or interim custody, 503
prohibition, 614
receiver, 505
reception of lunatic, 669
removal of arbitrator or to set aside award, 628
sale of lunatic's property, 669
perishable goods, 503
transfer to Chancery Division, 446
granting leave to enter plaint, 463
in the nature of mandamus, 614
interlocutory, 503—508
not to be drawn up, 536
to remit action, appeal against, 441
effect of, 440
is in discretion of High Court, 439
procedure after, 440
show cause in case of *certiorari*, 610
parish lands (exhausted), jurisdiction of county court as to sale of, 682
particulars, administration action, 467
admission of truth of, 501
account claimed, 466
ejectment action, 467
filing of, 466
further, 467
separate causes of action, 467
signature of, by solicitor, 468
title actions, 467
parties, addition of, by judge, 457
to counterclaim, 491
amendment of, 508, 509
change of, 511
heir-at-law need not be a party, when, 457
in action for prevention of waste or protection of property, 457
under Pharmacy Acts, 1852 and 1868...676
administration action in claim of person not a party, 458
proceedings under Rivers Pollution Prevention Acts, 1876 and 1893...681
industrial and provident societies, 659
infants as, 455
joinder of, 453
legal representative, where there is no, 457
lunatics, 455
married women, 455
non-appearance of, 526
partners, 456
persons interested but not parties, when bound, 455
representation of absent parties, 457
heir-at-law, next of kin or class when unknown, 457
trustees, executors and administrators, 455
partners as parties, 456

COUNTY COURTS—*continued.*
partners, service of summons on, 470
partnership, attachment of debts, 576
execution against a, 556
proceedings, venue in, 452
redemption of interest of partner charged by a judgment, 557
party entitled to begin, 532
in representative capacity, 454
meaning of term, 453
payment by instalments, 539
into court by defendant, 493
acceptance by plaintiff, effect of, 494
garnishee, 572
executor or administrator, 496
plaintiff in answer to counterclaim, 495
trustees, 497, 691, 692
in equitable action, 496
libel action, 495
infant, in case of, 497
investment of money paid into court, 499
lunatic, in case of, 497
not communicated to jury, 533
of less sum, denying liability, 496
receipt and reinvestment of dividends on money paid into court, 499
under defence of tender, 495
of fees, 618
out of court, 497
estate duty must be paid before, 500
of money paid in by garnishee, 573
small sum belonging to intestate, 500
under ordinary judgment, time for, 539
pension of judge, 417
perjury, prosecution for, 616
person qualified to practise in county court, 525
petition, 481
pharmaceutical chemists, statutory jurisdiction of county court as to, 676
plaint, entry of, 460
by married woman, 464
defendant being labourer etc., 463
infant desiring to commence action, 463
jurisdiction being given by consent, 462
where leave is necessary, 462
fee on, 461
note, 461
plaintiffs, who may be, 453
point of law, note of, by judge, 533
pollution of rivers and streams, statutory jurisdiction of county court as to, 680
præcipe, contents of, 460
private street expenses, recovery of, by urban authority, 677
probate matters (contentious), jurisdiction of county court as to, 644
procedure, appeal, leading to, 604
for recovery of money or settlement of dispute as to distress under Agricultural Holdings Act, 1908...630
in action against officer acting under order of court, 426
cases of assault on officers of court and rescue of goods, 427
execution out of jurisdiction, 567
on application for new trial, 548
transfer of action, 483
to appoint receiver under Licensing Act, 1904...664
entry of plaint, 460
interlocutory applications, 507
objection to jurisdiction, 490
order of transfer to Chancery Division, 446
to remit action, after, 440
under Agricultural Holdings Act, 1908, on statement of a case, 627
Alkali etc., Works Regulation Act, 1906...632
Allotments Extension Act, 1882...634
Ballot Act, 1872...635

COUNTY COURTS—*continued.*
procedure under Building Societies Act, 1874...638, 639
Charitable Trusts Acts, 1853 to 1891...641
Collecting Societies and Industrial Assurance Companies Act, 1896...643
Commons Act, 1876...644
Court of Probate Acts, 1857 and 1858...645
Finance Act, 1894, s. 10...649
s. 14...650
Friendly Societies Act, 1896...652
Guardianship of Infants Act, 1886...654
Industrial and Provident Societies Act, 1893...658
Inebriates Act, 1899...660
Habitual Drunkards Act, 1879...660
Judicial Trustees Act, 1896...661
Literary and Scientific Institutions Act, 1854...665
Local Loans Act, 1875...667
London Building Act, 1894, on appeal against award, 668
Lunacy Act, 1890...670
Married Women's Property Act, 1882...670, 671
Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 672
Open Spaces Act, 1906...672
Public Trustee Act, 1906...679
Sale of Exhausted Parish Lands Act, 1876...683
Small Dwellings Acquisition Act, 1899...685
Settled Land Acts, 1882 to 1890...684
Solicitors Act, 1870...686
Stannaries Court (Abolition) Act, 1896...686
statutes conferring special jurisdiction (generally), 624
Succession Duty Act, 1853, on appeals, 687
Telegraph Acts, 1863 and 1878...688
Tithe Act, 1891...690
Trustee Act, 1893...691
proceedings in court, 531—533
prohibition does not lie, when, 613
partial, 613
writ of, 611
list of cases where granted, 612
proof of documents, 532
public trustee, statutory jurisdiction of county court in matter relating to, 679
railway accident, inquiry into, 622
company, service of summons on, 471
receiver, 505—506
jurisdiction to appoint, 433
under Licensing Act, 1904, appointment of, by county court, 662
receiving order, effect of, on execution, 563
reception order (lunatic), 669
recovery of costs, 600
expenses of extraordinary traffic by local authority, 655
possession, action for, where to be brought, 437
jurisdiction in, 436
plaint in case of, 462
service of summons, 469
specific chattels, 569
redemption, joinder of causes of action in, 458
registrar, 417—421. *See also* officers of court.
appointment of, 417
certificate of, on taking accounts and inquiries, 544
deputy registrar, as to, 419
duties of, 418
under Bills of Sales Act (1878) Amendment Act, 1882...622
Deeds of Arrangement Act, 1887...623
Intestates Acts, 1873—1875...623
joint registrars, 419
jurisdiction of, 419
liabilities of, 417
office of, period of keeping open, 413
powers of, 418

COUNTY COURTS—*continued.*
registrar—*continued.*
powers of, in disputed claims, 529
where defendant admits claim, 529
qualification of, 417
reference to, of matters of account, 529
removal of, 417
salary of, 420
registry of judgments, 547
remitted actions, 438—443
removal of arbitrator under Agricultural Holdings Act, 1908...625
judge, 415
judgment into the High Court, 560
registrar, 417
rentcharge substituted for extraordinary tithes, recovery of, 647
(tithe), statutory jurisdiction of county court as to, 690
replevin, joinder of causes of action in, 459
jurisdiction in, 429
report of examiner, 518
representation of absent parties, 457
heir-at-law, next of kin or class when unknown, 457
where there is no legal representative, 457
restoration of action after striking out for non-appearance, 527
right of reply, 533
riots, compensation for damage by, statutory jurisdiction of county courts as to, 680
rivers and streams, pollution of, statutory jurisdiction of county courts as to, 680
rule committee, 617
rules and forms, 617
salary of high bailiff, 422
judge, 417
registrar, 420
sale of goods, cause of action arises where, 451
under execution, 564
seal of county court, 621
searches as to payment out of money in court, 497
security by officer of friendly society, 651
officers of the court, 423
receiver, 505
for costs, 600
for costs of a county court appeal, 606
discovery, 515
plaintiff being out of jurisdiction, 461
seduction, county court has no jurisdiction in, 432
selected action, 482
service, generally, 619
of copy of affidavit on other side, 531
default summons, 466
garnishee summons, 571
judgment on solicitor, 537
notice of defence, 486
motion (appeal), 605
order made on hearing of partition, 675
proposed sureties for costs, 600
set-off or counterclaim, 486
to show cause against committal, 577
order for attachment, 577
examination of debtor, 551
interrogatories, 514
to be enforced by attachment, 577
to show cause in case of *certiorari*, 611
ordinary summons, 468
petition, 481
summons, house closed, 471
in cases arising in metropolitan courts, 472
ejectment, 469
recovery of possession, 469
on asylum employee, 471
company, 476

COUNTY COURTS—*continued.*
service of summons on corporation, 471
defendant carrying on business in name other than his own 470
defendant on board ship, 470
husband and wife, 470
infant, 469
lunatic, 469
miner, 471
partners, 470
prisoner, 470
railway company, 471
soldiers and marines, 470
solicitor, 469
witness, 529
out of England and Wales, 477
the district, 476
substituted, 469
under Bills of Exchange Act, 1855...479
extended jurisdiction, 472
on Sunday, holidays etc., 620
where solicitor employed, 469, 619
services rendered, cause of action arises where, 451
set-off, 491
signature of roll by solicitor, 525
slander, county court has no jurisdiction in, 432
small dwellings (on which money has been advanced), statutory jurisdiction of county court as to granting possession of, 685
"society or branch," meaning of, in Friendly Societies Act, 1896...651
soldier, service of summons on, 470
special case under Agricultural Holdings Act, 1908...626
specific performance, jurisdiction in, 432
speeches at trial, order of, 533
stating a case for opinion of High Court in friendly society disputes, 652
under Building Societies Act, 1874...639
statutory creation of county court, 410
defence, notice of, 485
stay of actions, 482
proceedings after submission to arbitration, 525
grant of summons to show cause in case of *certiorari* operates as, 611
succession duty, appeals from assessment, 687
summons, default, 465
request for judgment by instalments on, 466
service of, 466, 473
for service in foreign district, transmission of, 474
form of, 464
under Bills of Exchange Act, 1855...479
garnishee, 570
indorsements on, 475
issue of, on transfer for trial of actions under extended jurisdiction, 484
notice of doubtful service of, 475, 476
non-service of, 475, 476
service of, 468. *See also* service.
out of England and Wales, 477
successive, 465
service of, 472
to jurymen, 521
to witness, 529
surrender of local jurisdictions, 412
taxation. *See also* costs.
of parliamentary returning officer's accounts, 673
third party costs, 590
telegraphs, disputes as to placing of, 688
tender, defence of, 487
payment into court under defence of, 495
third party, claim against for contribution or indemnity, 491
time, computation of, 620
enlargement or abridgment of, 620

COUNTY COURTS—*continued.*
times of sitting of county courts, 412
tithe rentcharge, statutory jurisdiction of county court as to, 690
title, actions where title in question, jurisdiction in, 430
particulars in action of, 467
toll, meaning of, 431
questions of, not within jurisdiction of county court, 431
tort, remitted actions of, jurisdiction in, 441
trade mark, action for injunction to restrain infringement of, not within jurisdiction of county court, 432
traffic (extraordinary), statutory jurisdiction of county court as to expenses of, 655
transfer of action, 482
for trial under extended jurisdiction, 483
equitable actions to Chancery Division, 446
from Chancery Division to county court where amount exceeds limit of county court jurisdiction, 447
treasurer, the, as to, 423
Trustee Acts, 1850, 1852, venue of proceedings under, 452
appointment of (of life policy under Married Women's Property Act 1882), 670
(public), statutory jurisdiction of county court in matters relating to, 679
(new), appointment of, by county court, 691
of charities, appointment of, by county court, 640
vacation, length of, 413
venue of action, 448
"carry on business," meaning of, 449
"dwell," meaning of, 449
in administration actions, 452
case of mortgages, 452
partnership cases, 452
proceedings under Trustee Acts, 1850 and 1852...452
of equity actions, 452
vesting orders by county court, 691
warrant of committal for contempt, 616
delivery of chattel, 569
execution, 552, 555
concurrent warrants, 555
contents of, 555
duplicate, 555
effect of, 557
nature of, 555
renewal of, 555
sent to foreign court, binds goods of debtor, when, 567
possession, 568
witness, 529—531
allowance to, 530
examination of, before trial, 516
penalty for non-attendance, 530
prisoner as, order for bringing up, 530
service of summons on, 529
"workman," definition of, in Employers and Workmen Act, 1875...647
workshops, statutory jurisdiction of county courts as to 648
writ of *certiorari*, 610
prohibition, 611

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